

COURT OF APPEAL FOR ONTARIO

CITATION: Paterson v. Royal Bank of Canada, 2026 ONCA 480

DATE: 20260702

DOCKET: COA-25-CV-0431

van Rensburg, Dawe and Madsen JJ.A.

BETWEEN

G. Scott Paterson

Plaintiff (Appellant/
Respondent by way of cross-appeal)

and

The Royal Bank of Canada, RBC Dominion Securities Inc.,
Anthony S. Fell, Bryce W. Douglas, Neil Selfe, R. Jamie
Anderson, John Doe and Jane Doe

Defendants (Respondents/
Appellants by way of cross-appeal)

M. Philip Tunley, for the appellant/respondent by way of cross-appeal

William C. McDowell, Evan Linn and Mackenzie Faulkner, for the
respondents/appellants by way of cross-appeal

Heard: November 13, 2025

On appeal from the order of Justice Markus Koehnen of the Superior Court of
Justice, dated February 24, 2025, with reasons reported at 2025 ONSC 1122.

van Rensburg J.A.:

Overview

[1] The appellant, Scott Paterson, appeals the order of Koehnen J. (the “motion judge”) striking out his Statement of Claim¹ on a motion under r. 21 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.² The respondents seek leave to cross-appeal the motion judge’s order that each side bear its own costs of the motion.

[2] The appellant commenced an action in May 2022 claiming that, decades earlier, the respondents had engaged in a campaign to defame and injure him, including by pressuring the Ontario Securities Commission (the “OSC”) to investigate and take proceedings against him and Yorkton Securities Inc. (“Yorkton”), the brokerage firm where he was Chair and Chief Executive Officer (“CEO”). The motion judge held that the claims asserted in the Statement of Claim were barred by the expiry of the ultimate 15-year limitation period under s. 15 of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B (the “*Limitations Act*”). He rejected the appellant’s argument that the running of the ultimate limitation period was interrupted by the respondents’ wilful concealment of material facts, pursuant to s. 15(4)(c). The motion judge also struck the Statement of Claim as an abuse of

¹ The pleading that the respondents originally moved to strike was the appellant’s amended statement of claim. By the time the motion was argued, the appellant had prepared a draft amended statement of claim, adding para. 107A, a pleading of wilful concealment, in an effort to suspend the operation of s. 15 of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, the ultimate limitation period. The amendment was not opposed and the motion judge’s decision was based on the draft amended statement of claim. It is that pleading that is referred to in these reasons as the Statement of Claim.

² Although the motion judge stated that he did not believe that the flaws could be corrected by an amendment, he struck out the Statement of Claim with leave to amend. There was no indication on the appeal of an intention to amend, no argument was addressed to this issue, and accordingly the appeal treated the motion judge’s order as a final order striking the Statement of Claim.

process, concluding, among other things, that it improperly impugned the OSC proceedings.

[3] The appellant asserts that the motion judge erred in respect of both conclusions. He asks that the order of the motion judge be set aside and the action be allowed to proceed.

[4] For the reasons that follow, I would dismiss the appeal. I have concluded that the motion judge was correct to determine that, irrespective of whether there was wilful concealment on the part of the respondents, the appellant was aware of the material facts in respect of the claims made in the action by, at the latest, 2004. The Statement of Claim was properly struck because the claims asserted therein are barred by the expiry of the ultimate limitation period. The absence of any error on the limitation period ground is dispositive of this appeal.

[5] While it is unnecessary to address the abuse of process issue, I simply note that I do not necessarily agree with the motion judge's characterization of the appellant's action or his decision that, at this stage of the proceedings, and on the basis of the appellant's pleadings alone, it was appropriate to strike the Statement of Claim as an abuse of process. Accordingly, nothing in these reasons should be taken to endorse the motion judge's approach to, or findings on, the abuse of process issue.

[6] Finally, I would grant leave to the respondents to appeal the costs award, and I would allow the cross-appeal on costs. The motion judge ought not to have made a “no costs” order in this case based on his view of the respondents’ *animus* toward the appellant, without providing the parties the opportunity to make submissions. I would set aside the “no costs” order and order costs of the motion in favour of the respondents in the sum of \$51,746.77, inclusive of disbursements and applicable taxes.

Facts

[7] The Statement of Claim is a lengthy document, consisting of 114 paragraphs and referring to a chronology of events commencing in 1985. Essentially, the appellant asserts that the respondents engaged in a campaign to ruin his reputation and injure him financially. The proceedings were commenced on May 13, 2022. The acts and omissions of the respondents on which the claim is based are alleged to have taken place commencing in or before 1998 until 2002.

[8] The appellant worked briefly at Dominion Securities Pitfield, at the start of his career, between 1985 and 1987. In 1987, the firm was acquired by Royal Bank of Canada (“RBC”), becoming RBC Dominion Securities Inc. (“RBC DS”). The personal defendants were directors, senior officers, and employees of RBC and/or RBC DS at the time of the alleged events.

[9] The Statement of Claim pleads that the appellant was a highly successful investment banker during the 1980s and 90s. After leaving RBC DS in 1987, he was recruited by other leading firms, and in 1995 he joined Yorkton, eventually becoming its Chair and CEO.

[10] The appellant pleads that he was a leader in investment banking in the burgeoning tech sector and prominent in the business community; that under his leadership, Yorkton outranked RBC DS as the top technology underwriter in Canada; and that the two firms competed for business, with Yorkton often prevailing.

[11] The Statement of Claim asserts that, commencing in or about 1998, the appellant came under a series of unwarranted personal and professional attacks, including, but not limited to, negative press coverage by leading Canadian media, negative marketing pitches to Canadian corporate issuers, and an investigation and administrative proceeding by the OSC. The appellant claims that some of the attacks were serious and had lasting and damaging effects on him which continued to the date of the Claim.

[12] The appellant claims that the respondents agreed to “encourage, and even to pressure” regulators to investigate him and Yorkton, in direct communications and by persuading the media to publish articles “designed to influence public, governmental and regulatory attitudes to the investigations in their favour”. He

pleads that the OSC “eventually succumbed to this pressure” and that the respondents caused the OSC to conduct an investigation, and that before any conclusions had been drawn, the respondents “encouraged” OSC investigators to publicly disclose information and/or leak it to journalists, and to require that Yorkton disclose the existence of their investigation to Yorkton’s clients and investors. He also pleads that, as a result of the respondents’ undue pressure, the OSC launched an administrative proceeding against him, even though he did not violate any laws, rules, or regulations. The proceedings culminated in settlement agreements between the OSC and each of the appellant and Yorkton and in OSC orders implementing the settlements. The OSC order against the appellant (the “OSC Order”) and his settlement with the OSC (the “Settlement”), among other things, required the appellant to sell his interest in Yorkton at book value; to be reprimanded; to be suspended from acting as a director or officer of a reporting issuer for two years and be prohibited from trading in securities for six months; and to pay a fine and costs to the OSC.

[13] The appellant pleads that the respondents mounted a “market campaign” and a “media campaign” to defame him both before and after the OSC investigation. Among other things, they told industry members and potential clients that he was “unethical”; “appl[ied] pressure to” and “persuad[ed] or attempt[ed] to persuade” media outlets to publish negative articles about him; and

misrepresented the meaning of the OSC Order and Settlement to various persons, conveying the false impression that he had breached securities laws.

[14] The Statement of Claim pleads details of certain specific conduct of the respondents, which pleadings are addressed below in the context of what the appellant knew at the time such conduct occurred.

[15] The Statement of Claim pleads that the appellant had “long suspected” that the respondents or persons related to them had “initiated and were responsible for [the] attacks, or some of them”, but that he was unable to substantiate that suspicion. The appellant pleads that, in 2004, he was told by business journalist and historian Peter C. Newman, who had devoted most of four pages to the appellant and the sources of his career difficulties in his autobiography, *Here Be Dragons*, that “confidential sources [...] had told Newman that [RBC] and many of its senior executives hated [the appellant], and that it was they who had encouraged the Canadian business press to attack [him], and caused the OSC to investigate him.”

[16] The appellant pleads that he continued to believe that he had been wronged, “but he did not have sufficient evidence to commence legal action against particular persons” until he received a note from an unknown person (the “Whistleblower Note”), that stated:

Scott,

I thought you might find this interesting. I was cleaning out my desk the other day and found this memo. I am sure this only confirms what you already knew - there was a concerted and focused effort at [RBC DS] to make your life difficult. I recall many discussions led by the most senior executives of the firm on how to stop Paterson. Many other antics went on to make your life difficult that I am sure you wondered where it was coming from.

The Whistleblower Note attached a copy of a memo on RBC DS letterhead dated November 20, 1998 from the respondent Bryce Douglas, as Deputy Chairman of RBC DS (the "Douglas Memorandum"). The Douglas Memorandum referred to an attached article from a recent edition of the Canadian Business magazine and stated, in part:

I have met Paterson on a couple of occasions and found him to be obnoxious. However, I didn't realize just how obnoxious.

I'm not sure that you want to spend a lot of time reading this article it comes across as portraying Mr. Paterson as being crass, egotistical and unpleasant. They come and they go. Hopefully that is the case in this instance. I don't think I can ever recall anybody, that was as full of himself as Mr. Paterson, that didn't eventually blown [sic] himself up. I know you have better things to do than get overly fussed about Mr. Paterson. But if you can give him a push to help him over the edge it might be energy well spent.

[17] The appellant claims damages for loss of profit and loss of investment income from being required, under the terms of the OSC Order and Settlement, to

sell his interest in Yorkton; loss of income over his career as a direct result of the respondents' campaign, which never recovered after the two-year ban in the OSC Order and Settlement; and reputational damage from the respondents' defamation, including their misrepresentation of the OSC Order and Settlement and their allegations of his unethical conduct and dishonesty. The Statement of Claim claims \$250 million in general and aggravated damages for civil conspiracy, defamation, injurious falsehood, and interference with economic relations; special damages to be determined; and punitive and exemplary damages in the amount of \$25 million.

[18] Finally, at para. 107A, the appellant asserts that, by their actions alleged in the Statement of Claim, and particularly certain paragraphs thereof, the respondents wilfully concealed from him that any injury, loss and damage he was suffering was caused or contributed to by their wrongful conduct, and wilfully misled the appellant and the business community to believe he would have no legal claim against them because any injury, loss and damage would appear to be the result of independent journalists, regulators, and other third persons.

Decision of the Motion Judge

[19] The respondents moved to strike the appellant's amended statement of claim on the grounds that (i) it amounted to a collateral attack on the OSC Order and Settlement; (ii) it was an abuse of process; (iii) the claims were time-barred by the 15-year ultimate limitation period under the *Limitations Act*; and (iv) there were

defects in the way certain causes of action were pleaded. The appellant filed a cross-motion seeking to amend the amended statement of claim to add para. 107A to assert a claim of wilful concealment under s. 15(4)(c)(i) and (ii) of the *Limitations Act*. The amendment was not opposed. As a result, the respondents' motion was considered on the basis of the Statement of Claim, that is, the appellant's draft amended amended statement of claim incorporating para. 107A.

[20] The motion judge granted the respondents' motion. He held that the Statement of Claim amounted to an abuse of process and was commenced outside of the 15-year ultimate limitation period.

[21] The motion judge observed that the Statement of Claim implicitly attacked the factual basis of the OSC Order and Settlement, and not their legal force. Therefore, rather than considering the Statement of Claim as a collateral attack on the OSC Order and Settlement, the better approach was to consider the doctrine of abuse of process.

[22] The motion judge concluded that the Statement of Claim amounted to an abuse of process for three reasons. First, it sought to transfer the financial consequences of the Settlement from the appellant to the respondents. According to the motion judge, the appellant's claimed damages of \$275 million were losses directly attributable to the Settlement, and not the respondents' conduct. Second, the Statement of Claim impugned the integrity of the OSC process. Adjudicating

the claim would require the court to investigate the OSC process to determine whether it had been subject to improper pressure from the respondents, which would only be appropriate had the OSC been a party to the proceeding with a right to make submissions. Third, the motion judge stated that the Statement of Claim implicitly sought to relitigate the facts underlying the Settlement.

[23] Applying Doherty J.A.'s reasoning from *Toronto (City) v. C.U.P.E., Local 79* (2001), 55 O.R. (3d) 541, aff'd on other grounds, 2003 SCC 63, [2003] 3 S.C.R. 77, the motion judge observed that the proceeding amounted to an abuse of process. Revisiting the OSC Order and Settlement would cast significant doubt on the perception that the OSC process achieves results that are consistent, fair, and accurate. Further, the need for finality was not outweighed by the interests of justice in this case: the appellant decided not to defend himself in a formal hearing at the OSC and instead chose to settle. The motion judge also noted that, in light of the fact that neither of the new documents (the Whistleblower Note and the Douglas Memorandum) suggested that the respondents applied pressure to members of the OSC, "[i]f someone seeks to attack the propriety of an adjudicative process 24 years after the fact, they should be required to provide some level of particularity in pleading beyond bald allegations."

[24] As for the limitation period defence, the motion judge struck out the Statement of Claim as disclosing no cause of action under r. 21.01(1)(b) because

the action was commenced outside the 15-year ultimate limitation period under s. 15(2) of the *Limitations Act*.

[25] The motion judge concluded that the doctrine of wilful concealment provided for in s. 15(4)(c) did not apply. He noted that the Statement of Claim contained no allegations of conduct by the respondents after 2002. The motion judge pointed to several specific allegations in the pleading that demonstrated that, while there might be details of which the appellant was not aware, he knew of a sufficient number of instances before 2002 of statements by the respondents that were designed and intended to harm his career, and that, no later than 2004, he had formed the view that the respondents caused the OSC to investigate him.

[26] The motion judge concluded that the proposed amendment in para. 107A did not assist the appellant in avoiding the ultimate limitation period through s. 15(4)(c)(i) and (ii). He did not plead material facts about what was concealed, how the defendants went about concealing it, or how the respondents misrepresented their conduct to the appellant. Moreover, the concept of the respondents having concealed information from the appellant or having misled him “would seem to contradict many of the paragraphs that [the appellant] expressly pleads in his Statement of Claim.”

[27] With respect to the costs of the motion, the motion judge found it appropriate for each side to bear their own costs after concluding that the respondents should

not be rewarded with costs in view of their *animus* toward the appellant, as shown in the Douglas Memorandum.

Positions of the Parties

[28] The appellant submits that the motion judge erred in striking his action based on abuse of process. He asserts that the application of the doctrine of abuse of process requires findings of fact and that it was premature for the motion judge to make findings relevant to whether his action was an abuse of process on a r. 21 motion, based only on the Statement of Claim. The appellant says that the motion judge misconstrued his claims, and he challenges, as contrary to what is pleaded in the Statement of Claim, the motion judge's findings that the action: (1) seeks to transfer the financial consequences of the OSC Order and Settlement to the respondents; (2) impugns the integrity of the OSC process; and (3) seeks to re-litigate certain facts underlying the Settlement. The appellant contends that, contrary to the motion judge's view, the thrust of his claim is not to attack the propriety of the OSC's adjudicative process, but to recover damages for the respondents' campaign against him, including their misrepresentation of the OSC Order and Settlement.

[29] The respondents assert that the motion judge correctly concluded that the Statement of Claim is an abuse of process. There was no error in his conclusions that the action seeks to undermine the financial consequences of the Settlement and to challenge the fairness of the investigative and adjudicative processes of the

OSC. According to the respondents, the appellant's action is clearly an attempt to make an end-run around the OSC Order and Settlement by attacking them indirectly in a belated civil action, in violation of his obligation and undertaking in the Settlement not to pursue a hearing, appeal, or judicial review of the OSC proceedings. The motion judge was correct to conclude that the interests of finality outweigh any interest of the appellant in pursuing the litigation.

[30] With respect to the limitation period issue, the appellant submits that the motion judge erred in law in applying the ultimate limitation period in s. 15, and by failing to give effect to s. 15(4)(c)(i) and (ii) to toll its application. He contends that the effect of this provision is that the ultimate limitation period does not run during any time in which a defendant's conduct fits the descriptions set out in s. 15(4)(c)(i) or (ii). According to the appellant, para. 107A pleads sufficient facts to raise the wilful concealment issue in the circumstances of this case where the respondents' actions were necessarily covert and the motion judge was wrong, on a r. 21 motion, to make findings about what was known by the appellant in light of his pleading at para. 107A. The appellant contends that the facts in his pleadings that he admitted to knowing about prior to receipt of the Whistleblower Note were not sufficient to give rise to a claim for conspiracy. He also submits that the motion judge erred in reading into this provision a requirement for "active conduct on the part of a defendant" in concealing or misrepresenting material facts.

[31] The respondents submit that the motion judge did not err in holding that s. 15 bars the appellant's claim. In order to establish wilful concealment, the appellant must first show he was unaware of the facts underlying his claim. The motion judge was correct to observe that the appellant's own pleadings, which were taken as true for the purposes of the motion, make it clear that the appellant knew of the alleged campaign against him by the respondents as far back as 1996 and at the latest by 2004. The motion judge correctly held that he need not take the amendment as true given that it was not only unsupported but contradicted by the factual pleadings in the Statement of Claim. Further, the respondents assert that the motion judge was correct in concluding that, even if the appellant was not aware of certain conduct, the facts pleaded did not amount to wilful concealment.

[32] As I have indicated, it is unnecessary to consider the ground of appeal that challenges the motion judge's decision to strike the Statement of Claim as an abuse of process. The balance of my reasons will address only the limitation period ground of appeal. As I will explain, there is no reason to interfere with the motion judge's conclusion that the appellant's claims are barred by the expiry of the ultimate limitation period. Accordingly, the action was properly dismissed on that basis.

The Limitation Period Issue

1. The Ultimate Limitation Period

[33] Section 15 of the *Limitations Act* provides for an “ultimate” limitation period of 15 years that runs from the day on which the act or omission on which the claim is based took place, subject to certain exceptions. One exception is for the period during which there was wilful concealment by the person against whom the claim is made. The relevant parts of s. 15 are as follows:

15. (1) Even if the limitation period established by any other section of this Act in respect of a claim has not expired, no proceeding shall be commenced in respect of the claim after the expiry of a limitation period established by this section.

(2) No proceeding shall be commenced in respect of any claim after the 15th anniversary of the day on which the act or omission on which the claim is based took place.

[...]

(4) The limitation period established by subsection (2) does not run during any time in which,

[...]

(c) the person against whom the claim is made,

(i) wilfully conceals from the person with the claim the fact that injury, loss or damage has occurred, that it was caused by or contributed to by an act or omission or that the act or omission was that of the person against whom the claim is made, or

(ii) wilfully misleads the person with the claim as to the appropriateness of a proceeding as a means of remedying the injury, loss or damage.

(5) The burden of proving that subsection (4) applies is on the person with the claim.

[34] Because of the transition provisions in the *Limitations Act*, the starting date for the running of the ultimate limitation period is the later of the date when the act or omission on which the claim is based took place and January 1, 2004 (the date when the *Limitations Act* came into effect): *York Condominium Corporation No. 382 v. Jay-M Holdings Limited*, 2007 ONCA 49, 84 O.R. (3d) 414, at para. 2, leave to appeal refused, [2007] S.C.C.A. No. 154. This means that, since the Statement of Claim contains no allegations of acts or omissions by the respondents after 2002 (a fact that is not contested by the appellant), absent wilful concealment, the ultimate limitation period would have expired on January 1, 2019 (and not, as the motion judge stated, and the respondents on appeal reiterate, in 2017). In any event, there is no question that, except for the potential operation of s. 15(4)(c), the claims asserted in the Statement of Claim, which was commenced in 2022, would be barred by s. 15.

2. Standard of Review

[35] The issue before this court is whether it was plain and obvious that the appellant's claim is statute-barred. As this is an appeal from a determination of a question of law under r. 21.01(1), the standard of review is correctness: *Kaynes v. BP plc*, 2021 ONCA 36, 456 D.L.R. (4th) 247, at para. 34; *Das v. George Weston*

Limited, 2018 ONCA 1053, 43 E.T.R. (4th) 173, at para. 65, leave to appeal refused, [2019] S.C.C.A. No. 69.

3. Discussion

[36] There are two issues in respect of the limitation period ground of appeal: first, whether the motion judge erred in concluding that the appellant's pleadings precluded the application of the wilful concealment doctrine; and second, whether the motion judge erred in concluding that wilful concealment would not apply because the appellant's pleading of wilful concealment was defective.

[37] As I will explain, I would uphold the motion judge's conclusion that, because the appellant's own pleadings demonstrate that he knew of sufficient facts underlying his claims against the respondents, notwithstanding any concealment on their part, the doctrine of wilful concealment was of no assistance. I will also comment briefly on the motion judge's determination that the appellant would not meet his burden to establish wilful concealment in this case because of what he pleaded in support of s. 15(4)(c).

[38] The appellant relies on his pleading of wilful concealment at para. 107A of the Statement of Claim, which I set out for convenience:

107A. Paterson pleads that, by their actions alleged in this Statement of Claim, and particularly paragraphs 55, 65 (first and second sentences), 66, 69, 70, 71, 72, 73, 79, 80, 81, 83, 92 and 93 hereof, and by concealing and agreeing to conceal such actions from detection by anyone else the defendants

(a) wilfully concealed from Paterson that any injury, loss and damage he was suffering at the material times was being caused or contributed to by the defendants' own wrongful conduct against him, and

(b) wilfully misled both Paterson and the business community in which he worked to believe that Paterson would have no legal claim against the defendants, because any injury, loss and damage he was suffering would appear to be the result of independent journalists, regulators, and other third persons.

[39] The appellant suggests that the operation of s. 15(2) is suspended for any period during which there was wilful concealment by the respondents, irrespective of whether he knew of the acts or omissions on which his claims are based. I disagree. Properly interpreted, the exception in s. 15(4)(c) provides for the interruption of the ultimate limitation period only where the concealment and/or misleading by a defendant have prevented the plaintiff's discovery of the claim. Because the appellant knew of sufficient facts to initiate a claim, a pleading of wilful concealment cannot assist in avoiding the limitation period.

[40] The ultimate limitation period of 15 years begins to run on "the day on which the act or omission on which the claim is based took place." While the ultimate limitation period does not depend on the discoverability of the claim, the factors outlined in s. 15(4)(c) for the operation of wilful concealment mirror the discoverability criteria in s. 5 of the *Limitations Act*.

[41] The rationale for the interruption of the ultimate limitation period during a period of wilful concealment or wilful misleading is to prevent unfairness to a

plaintiff that would result if such conduct by a defendant prevented them from knowing they had a claim. There would be no unfairness if, notwithstanding such conduct, the claim was known or discoverable. Accordingly, the ultimate limitation period is tolled under s. 15(4) only for the duration of any period when the actions of the defendants prevented the claimant from meeting the discoverability criteria. If the claimant has sufficient knowledge of the facts in relation to the discoverability criteria listed in s. 5 and reflected in s. 15(4)(c)(i) and (ii), the limitation period is no longer tolled regardless of the defendant's efforts at concealment.

[42] In other words, there is a “causative element” to wilful concealment: “the plaintiff must be ignorant of the cause of action because of the misconduct of the defendant”: *Zeppa v. Woodbridge Heating & Air-Conditioning Ltd.*, 2019 ONCA 47, 144 O.R. (3d) 385, at para. 62, leave to appeal refused, [2019] S.C.C.A. No. 91, at para. 62, quoting *Colin v. Tan*, 2016 ONSC 1187, 81 C.P.C. (7th) 130, at paras. 44-47. If, notwithstanding the defendant's best efforts, the plaintiff knows of the cause of action and the appropriateness of bringing a proceeding, the causal link is absent and wilful concealment no longer operates to suspend the ultimate limitation period. As Feldman J.A., dissenting, but not on this point, stated in *Zeppa*, at para. 109, “[a]s outlined in s. 15(4) of the Act, the effect of a defendant's fraudulent concealment of essential facts is to toll the limitation period until the plaintiff learns about the concealed facts (either from the defendant or in some other way).”

[43] Accordingly, the motion judge did not err in examining the Statement of Claim to determine whether, according to the appellant's own pleadings, he had knowledge of the claims, notwithstanding any allegation that the respondents had engaged in wilful concealment.

[44] The motion judge observed that the general thrust of the appellant's action was that the respondents mounted a campaign against him both before and after the Settlement to detrimentally affect his career. He concluded that, regardless of the proposed amendment in para. 107A, the Statement of Claim made clear that the appellant knew or ought to have known about the respondents' conduct in this regard at the time the events occurred, and that, while there may be details of which he was not aware, the appellant was aware of a sufficient number of instances before 2002 of statements by the respondents that were designed and intended to harm his career.

[45] The motion judge pointed to several paragraphs of the Statement of Claim where the appellant referred to incidents that he knew about, or that were reported to him at the time, including specific incidents of the individual respondents and other representatives of RBC and RBC DS alleging that he was unethical and that Yorkton was misrepresenting its experience. For example, the appellant pleads that:

- The appellant first realized "something was amiss" in 1996 after RBC DS tried unsuccessfully to exclude Yorkton from an IPO they were co-

managing, by making an unsupported argument Yorkton was not eligible to perform the role (para. 56);

- After the publication of a favorable article about the appellant and Yorkton in late 1998, the appellant and his colleagues heard repeatedly from clients and prospective clients that RBC DS had told them he was unethical and Yorkton was misrepresenting its position as Canada's top technology underwriter (para. 61);
- In the spring of 1999, the appellant was told that the respondent Douglas was telling members of a golf club that the appellant was unethical, while giving the impression, which was untrue, that he knew the appellant well and had done business with him (para. 62);
- After Yorkton won a bid over RBC DS to lead a new financing, a representative of RBC DS left a scathing voicemail for one of the appellant's colleagues threatening that Yorkton and the appellant would "pay a heavy price" for this success (para. 63);
- While conducting a series of interviews with the appellant for a favourable article, a business journalist told him that an unnamed executive said he was unethical and ultimately confirmed the person worked for RBC DS and that he was the respondent Neil Selfe (para. 68);
- Immediately after the Settlement, the respondent Jamie Anderson initiated a process to revoke the appellant's golf club membership based on misrepresentations about the OSC Order and Settlement, alleging he was unethical, falsely claiming he had breached securities laws, and asserting that his character made him unfit to remain a member of the club (para. 94).

[46] Further, the motion judge correctly identified the key fact in the Statement of Claim that, in my view, is dispositive of the limitation period argument, in particular as it applies to the appellant's claim of civil conspiracy. This is the information the appellant learned from Peter C. Newman. Paragraph 6 of the Statement of Claim states:

In 2004, Peter C. Newman, Canada's most celebrated business journalist and historian, with the deepest and most thoroughly sourced

knowledge of the Canadian business establishment, published his autobiography titled *Here Be Dragons*. In that book Newman devoted most of four pages to Paterson, and to the sources of his career difficulties. Newman wrote, among other things, that the Canadian business establishment “frowned” on Paterson’s “rapid ascent to success”, and hinted at the cause of his reverses as follows:

“The Canadian Establishment exerts its veto powers stealthily, far below the radar. Such incidents are difficult to document, and impossible to prove. Yet they must be brought to light if accountability – let alone a genuine open free market – is to mean anything,

...

Something had to be done. And here the story becomes murky. Prompted by adverse newspaper stories, the Ontario Securities Commission launched a massive investigation into [Paterson’s] activities, either on its own, or more likely, because of complaints from fellow brokers who resented Paterson taking away their business and realized he was only at the beginning of his run.

...

Those who challenge the Establishment in this country leave its members with only two alternatives: to take them in and co-opt their energies, or to destroy their effectiveness. They ought to have done the former because they’ll never succeed in the latter. The Canadian Establishment never learns.”

When pressed in private conversation, Newman would only disclose that confidential sources, who he could not name, had told Newman that the Bank and many of its senior executives hated Paterson, and that it was they who had encouraged the Canadian business press to attack Paterson, and caused the OSC to investigate him. [emphasis added]

[47] The motion judge concluded that the critical Newman conversation occurred in 2004 – a reasonable inference from the pleading that is not challenged on appeal.

[48] I agree with the motion judge that these allegations in the Statement of Claim show that the appellant had formed the view, no later than 2004, that the respondents had caused the OSC to investigate him, and that the respondents had defamed him to the press and to the community. And I disagree with the appellant's assertion that, until he received the Whistleblower Note and the Douglas Memorandum, he did not have the necessary knowledge to make a conspiracy claim, and that the respondents' own actions concealed this knowledge from him, tolling the limitation period.

[49] The Newman conversation gave the appellant information from what he suggests was a reliable source about the material facts underlying his conspiracy claim. While "suspicion is not knowledge" for the purposes of a cause of action, the pleadings disclose more than a mere "suspicion" in this case. In fact, the pleadings disclose that the appellant was specifically informed of the very facts which he alleges the respondents tried to "wilfully conceal".

[50] Nor is there anything in the appellant's pleading of wilful concealment at para. 107A that would undermine this conclusion. Paragraph 107A pleads that by their actions in the Statement of Claim, and particularly paras. 55, 65 (first and second sentences), 66, 69, 70, 71, 72, 73, 79, 80, 81, 83, 92 and 93 thereof, the respondents wilfully concealed facts and misled him. The enumerated paragraphs however plead the wrongful acts of the respondents – the incidents of defamation and other harmful conduct, including their pressure on journalists and media

owners to publish negative articles, and their improper promotion of regulatory scrutiny. There is nothing in these paragraphs, or elsewhere in the Statement of Claim, that speaks, even indirectly, of the respondents' concealment of their actions from the appellant or of any conduct by the respondents that misled him.

[51] Indeed, while some of the respondents' actions may have been covert and unknown to the appellant, according to the Statement of Claim the respondents also acted openly and directly. The Statement of Claim makes it clear that the appellant knew, at the time, that individuals affiliated with RBC DS were defaming him to clients and the business community at large, asserting that he was unethical and lacked integrity. Even if the appellant was unaware of the specifics of their role in a campaign against him, there is nothing in the pleading to suggest that the respondents were concealing from the appellant their concerted intent to damage his reputation and professional standing. Again, according to what is alleged in the Statement of Claim, the respondents were not subtle about their combined efforts to injure him.

[52] Accordingly, I reject the appellant's argument that it was not plain and obvious that fraudulent concealment could not delay the running of the ultimate limitation period, and that the determination of such a matter ought to be decided by a trial judge, or on a summary judgment motion, rather than at the pleadings stage.

[53] In addressing the appellant's argument based on para. 107A of his pleading, the motion judge also considered the sufficiency of the appellant's pleading of wilful concealment, concluding that it was deficient. He observed that the Statement of Claim contained nothing but a bald allegation of concealment and misrepresentation, without material facts about what was concealed, how the respondents went about concealing it, or how they misrepresented their conduct to the appellant. He concluded that it would be wrong to permit the action to proceed based on a bald allegation of concealment when the Statement of Claim revealed that the appellant knew, before 2002, almost all of what he now alleges and does so without pleading any material facts about concealment or misrepresentation.

[54] In my view, once the motion judge determined that the appellant knew of the necessary facts to be able to advance his claim, it was unnecessary to go further. The issue here was not whether the claim of wilful concealment and misleading was sufficiently pleaded – if the pleading was bald, or if more facts were required, then an amendment of the pleading would have been in order. The key point, that was repeated by the motion judge in this part of his reasons, was that the Statement of Claim suggested that the appellant was aware of the essential facts to make out his claims no later than 2004.³

³ Although the motion proceeded on the basis of the ultimate limitation period and, as I have concluded, the Statement of Claim was properly struck on that basis, the implication of the motion judge's conclusion

[55] Finally, as an argument in this appeal, the appellant takes issue with the motion judge's comments, in passing, that "wilful concealment" and "wilful misleading" as used in s. 15(4)(c) require active conduct by defendants and that passive nondisclosure does not suffice. The appellant relies on case authority to suggest that this is an incorrect statement of the law because concealment "may arise from the manner in which the act which gives rise to the right of action is performed": *M(K) v. M(H)*, [1992] 3 SCR 6, at p. 57; *King v. Victor Parsons & Co.*, [1973] 1 All E.R. 206 (C.A.), at p. 209. The respondents disagree, and rely on case law suggesting that there must be some sort of active or deliberate conduct on the part of the defendant to conceal facts from the plaintiff: *Johnson v. Studley*, 2014 ONSC 1732, at para. 83; *Bhoola v. Vaughan (City)*, 2024 ONSC 103, 41 C.L.R. (5th) 84, at paras. 89-102; *Taylor v. David*, 2021 ONSC 3264, at para. 46, aff'd 2022 ONCA 200; *Johnston v. Griffiths*, 2025 ONSC 2048, 176 O.R. (3d) 463, at paras. 63-64. The extent to which active conduct on the part of the defendant is required in order to toll the ultimate limitation period under s. 15(4)(c) is an important issue that has not yet been determined by our court. It is unnecessary to address this question in the present case, and its resolution should await a case where its determination may affect the outcome of the appeal.

that the appellant knew of the essential facts to make out his claims by no later than 2004 is that the basic limitation period had also expired – at the latest, in 2006.

The Costs Cross-Appeal

[56] The costs cross-appeal can be addressed briefly.

[57] The motion judge dealt with costs in the final paragraph of his reasons. He noted that each side sought its costs in the event they were successful on the motion, and that both sides' costs struck him as reasonable, given the different cost structures of their respective firms. He concluded, however, that the appropriate award was to require each side to bear its own costs, stating that, although he found the Statement of Claim amounted to an abuse of process and that the appellant knew he had a cause of action in the early 2000s, "the Douglas memo suggests that there was a level of *animus* towards Paterson that should not be rewarded with costs."

[58] Leave to appeal costs is granted only sparingly by this court: the determination of costs is highly discretionary, and trial and motion judges are best positioned to assess costs, taking into account the dynamics of the case: *Canadian Tire Corporation, Limited v. Eaton Equipment Ltd.*, 2024 ONCA 25, 95 C.C.L.T. (4th) 175, at para. 13; *Bongard v. Bullen*, 2025 ONCA 473, at para. 13. An appellate court may set aside a trial or motion judge's costs award only if the judge made an error in principle or if the costs award is plainly wrong: *Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9, [2005] 1 S.C.R. 303, at para. 27.

[59] The respondents assert that the motion judge erred in finding *animus* at the pleadings stage, and in concluding that pre-litigation *animus* was a reason to deny

the successful parties their costs. These were errors in principle that justify the intervention of this court on appeal.

[60] The appellant submits that the motion judge was entitled to consider the *animus* of the respondents that was demonstrated in the Douglas Memorandum, a reliable document whose authenticity was not disclaimed by the respondents, as an additional relevant factor under r. 57.01(1)(i) that allows judges to consider “any other matter relevant to the question of costs.” The appellant contends that a “no costs” order was entirely within the motion judge’s discretion, and there was no error in principle.

[61] In my view this is an exceptional case where the motion judge’s exercise of discretion reflects an error in principle, and it is appropriate for this court to overturn the costs order.

[62] The motion judge made his decision having received the costs outlines of the parties that were submitted at the end of the hearing of the motion and before he had made his decision. He did not invite or receive oral or further written submissions on costs. Both costs outlines sought costs based on the assumption of success on the motion. Neither addressed the reasonableness of the other side’s costs; neither raised the prospect of an award of “no costs” in the event they were unsuccessful.

[63] I agree with the respondents that, in these circumstances, it was wrong for the motion judge to make an order for “no costs” based on his conclusion that the respondents should not be rewarded for the *animus* against the appellant that was displayed in the Douglas Memorandum. While I am not prepared to say that such an order could not fall within the proper exercise of a motion judge’s discretion, it would be an unusual order to make, and in my view inappropriate, without having the benefit of full submissions from the parties.

[64] Accordingly, I would grant leave to appeal costs, set aside the “no costs” order, and order that the appellant pay the respondents the amount they claimed for partial indemnity costs on the motion: the sum of \$51,746.77, inclusive of disbursements and applicable taxes.

Disposition

[65] For these reasons, I would dismiss the appeal and allow the cross-appeal. I would order costs to the respondents in the amounts agreed between the parties: \$25,000 on the appeal and \$5,000 on the cross-appeal, both amounts inclusive of disbursements and applicable taxes.

Released: July 2, 2026 “K.M.v.R.”

“K. van Rensburg J.A.”
“I agree. J. Dawe J.A.”
“I agree. L. Madsen J.A.”