

CITATION: Higher-Edge FZ-LLC v. The Huron University College Corporation
2026 ONSC 4824
COURT FILE NO.: CV-21-00661010-0000
DATE: 20260821

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
HIGHER-EDGE FZ-LLC o/a CANADIAN	)	
UNIVERSITY APPLICATION CENTRE	)	<i>Jamie M. Sanderson</i> for the Plaintiff
	)	
Plaintiff	)	
	)	
– and –	)	
	)	
THE HURON UNIVERSITY COLLEGE	)	
CORPORATION, ANJALI SETH, PREM	)	<i>Mitchell C. Brown</i> for the Defendants
WATSA, JOHN DOE and JANE DOE	)	
	)	
Defendants	)	
	)	
	)	
	)	HEARD: July 13, 2026

RULING ON THE DEFENDANTS' MOTION TO STRIKE

C. BOSWELL J.

OVERVIEW

[1] Huron University College is a degree-granting, affiliated college of Western University in London, Ontario.

[2] Higher-Edge FZ-LLC is a student recruitment firm based in the United Arab Emirates. It operates under the trade name, Canadian University Application Centre.

[3] Huron entered into a contract with Higher-Edge on October 1, 2016 to provide exclusive international student recruitment services to Huron for a period of two years. The contract was exclusive in relation to the recruitment of students from India and Bangladesh, but Higher-Edge was entitled to recruit students from other countries as well. The contract naturally contained a compensation scheme.

[4] The contract came up for renewal in the fall of 2018. Huron initially signaled that it intended to renew the contract. Ultimately it did not do so. Instead, Huron hired one of Higher-Edge's employees, Anjali Seth, as Huron's internal recruitment specialist for India. In other words, they decided to conduct recruitment of Indian students in-house, and hired one of Higher-Edge's employees to do so.

[5] Higher-Edge was deeply dissatisfied with Huron's conduct. It alleges that Ms. Seth misappropriated its confidential information and that Huron acted in bad faith and in breach of its contractual obligations.

[6] Higher-Edge commenced this action in April 2021. It claims damages of \$1 million against the defendants for breach of contract, breach of confidence, intentional interference with contractual relations, conspiracy, and unjust enrichment. It also seeks declarations that the defendants made unauthorized use of the confidential information of Higher-Edge, engaged in a conspiracy to injure them, intentionally interfered with their economic relations, and that Huron breached its duty of honest performance.

[7] The claim was served in mid-September 2021. The defendants have filed a Notice of Intent to Defend but have not yet filed a Statement of Defence.

[8] Instead, the defendants' counsel advised counsel to the plaintiff, in early October 2021, that their view was that the claim was insufficiently pleaded in a number of respects. They suggested that the plaintiff amend the claim to address the alleged deficiencies, failing which the defendants intended to move to strike the claim under rules 21.01(1)(b) and 25.11 of the *Rules of Civil Procedure*. A draft Notice of Motion was delivered.

[9] Time passed. No amendment was made.

[10] On August 28, 2024, the defendants formally served a Notice of Motion to strike the claim. The full motion record was not served until January 17, 2025. The motion was originally improperly scheduled before an associate justice for June 18, 2025. It was put over to a hearing before a judge and eventually proceeded on July 13, 2026.

THE ISSUES

[11] The positions taken by the parties raise the following issues for determination by the court:

- (i) Rule 21.01(2) requires that motions to strike under r. 21.01 are to be made promptly. Has the defendants' motion been made promptly? If not, what consequences should follow?

If the motion proceeds:

- (ii) Should the claim be dismissed under r. 21.01(1)(b) against the individual defendants for failing to disclose a reasonable cause of action against them?

- (iii) Should the following claims be dismissed under r. 25.11 as a result of a failure to sufficiently address the essential elements of the alleged claims:
 - (a) Conspiracy?
 - (b) Intentional Interference with Economic Relations?
 - (c) Unjust Enrichment?
- (iv) If any claims are struck, should the plaintiff be granted leave to amend?

DISCUSSION

General Principles Applicable to Motions to Strike

Rule 21.01(1)(b)

[12] Rule 21.01(1)(b) provides as follows:

21.01(1) A party may move before a judge,

(b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence.

[13] The principles to be applied on a motion to strike out a claim under r. 21.01(1)(b) are well-settled.

[14] Whether a pleading should be struck depends on whether it is plain and obvious that it discloses no reasonable cause of action or defence. In other words, that it has no reasonable prospect of success. See *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, at para. 33.

[15] Rule 21.01(1)(b) provides a law-based mechanism for disposing of a claim. In other words, motions initiated under the rule engage an inquiry as to whether, *as a matter of law*, it is plain and obvious that the plaintiff's claim cannot succeed. Because the motion involves a law-based inquiry, no evidence is admissible in support of it. Instead, the motions judge is to assume all of the allegations set out in the claim are true, unless patently ridiculous or incapable of proof, and determine, on the basis of those allegations, if it is plain and obvious that the claim cannot succeed. See *Frank v. Legate*, 2015 ONCA 631 at para. 36.

[16] As Perell J. observed in *Aviva Canada Inc. v. Lyons Auto Body Limited*, 2019 ONSC 6778, at para. 31, a failure to establish a cause of action usually arises in one of two ways. Either the allegations raised in the claim do not fall within a recognized cause of action, or the allegations fail to plead all the essential elements of a recognized cause. All of the defendants' complaints in this instance fall into the latter category.

[17] In assessing whether a claim advances a reasonable cause of action, the court must read the pleading generously and make allowances, if necessary, for drafting deficiencies. See *Nash v.*

Ontario, [1995] O.J. No. 4043, at para. 11. That said, a less liberal approach is generally taken when the court assesses the viability and adequacy of claims against corporate representatives. Where an assertion is made that a corporate representative's actions were themselves tortious, the plaintiffs' allegations against the individual must withstand a high degree of scrutiny. See *Piedra v. Copper Mesa Mining Corporation*, 2011 ONCA 191, at para. 75.

Rule 25.11

[18] Rule 25.11 provides:

25.11 The court may strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

- (a) may prejudice or delay the fair trial of the action;
- (b) is scandalous, frivolous or vexatious; or
- (c) is an abuse of the process of the court.

[19] Rule 25.06(1) provides that every pleading is to contain a concise statement of the material facts on which the party relies, but not the evidence by which those facts are to be proved. Where the minimum level of fact disclosure has not been reached, the pleading is irregular and should be struck. See *Copland v. Commodore Business Machines* (1985), 52 O.R. (2d) 586. See also *Stedfasts Inc. v. Dynacare Laboratories*, 2020 ONSC 8008, at para. 34.

[20] The same test that governs whether a pleading should be struck under r. 21.01(1)(b) – the plain and obvious test – governs whether a pleading should be struck as scandalous, frivolous, or an abuse of process of the court. See *Stedfasts*, at para. 33.

[21] Unlike motions under r. 21.01(1)(b), evidence is admissible on a motion brought under r. 25.11 provided it is relevant to the test to be applied under that rule. See *Baradaran v. Alexanian*, 2016 ONCA 533 at paras. 15-16.

[22] Because striking a pleading may deprive a litigant of a full trial on the merits of the claim, orders doing so, whether under r. 21.01(1)(b) or 25.11, should only be made in the clearest cases. See *Wernikowski v. Kirkland, Murphy & Ain*, [1999] O.J. No. 4812 (Ont. C.A.), at para. 12.

[23] Finally, I note that motions to strike claims on the basis of deficient pleadings serve the useful purpose of weeding out claims that clearly have no prospect of success, allowing courts to focus their limited resources on those claims that have a reasonable chance of succeeding. As a case management tool, however, they must be approached pragmatically. As Roberts J.A. observed in *PMC York Properties Inc. v. Siudak*, 2022 ONCA 634, at para. 34, injudicious use of motions to strike, that “involve quibbling over whether a known cause of action has been pleaded with sufficient particularity,” may do nothing more than cause unnecessary expense and delay and thereby run afoul of the overarching principle of r. 1.04, which directs the court to interpret

the *Rules* in such a way as to ensure the just, most expeditious and least expensive determination of every civil case on its merits.

[24] With these general principles in mind, I will address the live issues raised by the motion.

Issue One: The Promptness of the Motion

[25] Rule 21.01(2) provides that “a motion under rule 21.01 shall be made promptly and a failure to do so may be taken into account by the court in awarding costs.”

[26] Despite the “costs” reference, the requirement of promptness may, in appropriate circumstances, support the exercise of discretion to not grant relief at all under r. 21.01(1). See *Fleet Street Financial Corp. v. Levinson*, 2003 CanLII 21878 (Ont. S.C.J.), at para. 16. The plaintiff submits that the circumstances here render it appropriate to dismiss the motion pursuant to r. 20.01(2).

[27] Almost three-and-a-half years passed between the service of the Statement of Claim and the service of the defendants’ motion record. The only rational conclusion, given the circumstances, is that the motion was not brought promptly, as r. 20.01(2) requires. The real question is whether, despite its lack of promptness, it should be permitted to proceed. On balance, I am of the view that it should.

[28] The plaintiff cited several cases where r. 21 motions were dismissed for want of prompt prosecution, including *Schellenberg v. International Brotherhood et. al.*, 2014 ONSC 7305 and *Reid Heritage Homes v. City of Guelph*, 2014 ONSC 4425. In these cases, no explanation was offered to explain the delay in bringing the motion. The situation is different here. An explanation has been provided.

[29] The defendants point out that the claim was commenced by a Notice of Action in April 2021 but was not served until five months later. They say they promptly advised the plaintiff’s counsel of their intention to move to strike and sought the plaintiff’s position. They contend that they pursued the plaintiff for many months (roughly 16) in a fruitless effort to obtain that position. Finally, a mediation was agreed to and was conducted in June 2024. It was unsuccessful and, in the result, the defendants pressed on with the motion.

[30] I make two observations. The first is that I agree with an assertion made by the plaintiff’s counsel in oral submissions. Specifically, that the defendants had an obligation to move promptly. It is not an answer to suggest that they were waiting for 16 months to learn the plaintiff’s position. Absent consent by the plaintiff, the defendants should have assumed that the motion would be opposed and they should have got on with it.

[31] The second is that the plaintiff has not pursued this action with any diligence. It delayed in bringing it. It delayed in serving it, once commenced. And it has delayed in prosecuting it.

[32] Part of the delay can be explained by the parties’ efforts to resolve their dispute through mediation rather than litigation. Those efforts were appropriate and should not be discouraged.

That said, both parties must share responsibility for the lack of timely progress in this action. Said another way, the lack of promptness is a shared responsibility in this case.

[33] The fact is, despite more than five years having passed since the issuance of the claim, the action remains at the pleadings stage. It remains, in my view, appropriate to address pleadings issues before the action proceeds.

[34] In the circumstances, I am satisfied that this is not a case where the motion should be barred as a result of what is clearly a failure to move promptly. The lack of promptness may still, of course, be considered in relation to the issue of costs, as r. 21.01(2) indicates.

Issue Two: The Claim Against the Individual Defendants

[35] In addition to Huron, the plaintiff has named two of its employees, Ms. Seth and Mr. Prem Watsa, as defendants to the claim. I have already described Ms. Seth. Mr. Watsa was, at the material time, Huron's Chancellor.

[36] The allegations against the individual defendants consist of the following:

- (a) Ms. Seth unexpectedly resigned her employment with Higher-Edge in April 2018. Following her resignation, she refused to return intellectual property belonging to Higher-Edge, including a confidential recruitment list;
- (b) Through Mr. Watsa's connections, Huron engaged an "unidentified consultant" to assist with business development in India;
- (c) Ms. Seth took employment with Huron as its International Recruitment Specialist, India;
- (d) Ms. Seth solicited "multiple clients." The claim is not clear about whether these were clients who appeared on the alleged confidential recruitment list, or simply clients generally;
- (e) They participated in a conspiracy to harm Higher-Edge;
- (f) Alternatively, they participated in a conspiracy to intentionally engage in unlawful conduct to cause Higher-Edge personnel to breach their contractual and fiduciary obligations to Higher-Edge, when they knew or ought to have known that such conduct would likely cause harm to Higher-Edge;
- (g) They wrongfully interfered with Higher-Edge's contract with Huron and intentionally caused a breach;
- (h) They profited by way of unconscionable dealings as described in the Statement of Claim; and

- (i) Their conduct was harsh, vindictive, reprehensible, and malicious and deserving of an award of punitive damages.

[37] The claim alleges that the actions of the individual defendants were committed personally, deliberately, and recklessly, such that tortious conduct was their own, to further their own personal interests, benefits, and gains.

[38] The defendants submit that personal liability on the part of directors, officers, or employees of a corporation for the acts of the corporation is rare. Citing *Lobo v. Carleton University*, 2012 ONCA 498, the defendants say that to have a viable claim against the individual defendants, the plaintiff must establish that their actions were tortious, or those actions exhibit a separate identity from that of the corporation so as to make the actions their own.

[39] The defendants contend that the limited allegations advanced against the individual defendants make it plain and obvious that any claim against them cannot succeed. They assert, for instance, that:

- The only allegation against Mr. Watsa is that Huron used his connections to assist with business development in Mumbai. No legal wrong is associated with that vague allegation. This, they say, is a classic example of a plaintiff improperly naming an individual defendant in a claim against a corporation for tactical reasons;
- The allegation against Ms. Seth is that she took a job with Huron and refused to return intellectual property of Higher-Edge. But there is no cause of action pleaded with respect to Ms. Seth's employment relationship with Higher-Edge;
- Ms. Seth's employment relationship with Higher-Edge was in India. There is nothing alleged that would connect that employment relationship to the jurisdiction of Ontario; and
- The plaintiffs have pleaded that the individual defendants have personal liability for their conduct but have also, inconsistently, pleaded that Huron is vicariously liable for the conduct of the individual defendants.

[40] The plaintiffs submit that it is imperative that that claim be read as a whole. The purpose of the pleading is to provide the opposing party with notice of the claim to meet. Considered holistically, the Statement of Claim makes it clear that the plaintiff is alleging that Huron attempted to circumvent its agreement with Higher-Edge. Huron and the individual defendants conspired to essentially "cut out the middleman" by improperly hiring Ms. Seth away from Higher-Edge and using her and the confidential information she had from her employment with Higher-Edge in order to recruit students from India to Huron. Mr. Watsa is alleged to have put the scheme into motion through his contacts in India. Ms. Seth is alleged to have breached her employment contract and made off with Higher-Edge's intellectual property.

[41] In the plaintiff's submission, the claim is adequately pleaded. The defendants' complaints really go to the strength of the plaintiff's claims and not whether they raise legally viable claims.

Moreover, the issue with respect to jurisdiction is properly characterized as a defence and has nothing to do with the adequacy of pleadings.

[42] The defendants have correctly stated the law. In *Normart Management Ltd. v. West Hill Redevelopment Corp.*, [1998] O.J. No. 391 (Ont. C.A.), at para. 18, Finlayson J.A. summed up the jurisprudence as follows:

It is well established that the directing minds of corporations cannot be held civilly liable for the actions of the corporations they control and direct unless there is some conduct on the part of those directing minds that is either tortious in itself or exhibits a separate identity or interest from that of the corporations such as to make the acts or conduct complained of those of the directing minds.

[43] *Normart* has been cited extensively by trial and appellate courts alike. For instance, in *Piedra*, at para. 72, the Court of Appeal re-affirmed that, absent allegations of fraud, deceit, dishonesty, or want of authority, officers or employees of corporations are shielded from personal liability unless it can be shown that their actions were themselves tortious or exhibited a separate identity from that of the corporation, such that it could be said that the actions were their own. See also *Libfeld v. Patuca Corporation*, 2018 ONSC 3373, at para. 16.

[44] In my view, the claim against Mr. Watsa cannot stand, as it is presently drafted. It is plain and obvious that, as constituted, the claim against him has no reasonable prospect of success.

[45] Mr. Watsa has been named individually, but his conduct is really just lumped in with the alleged wrongful conduct of Huron on the whole. There is no suggestion that he was a directing mind of Huron and that, in that capacity, he engaged in fraud, deceit, or dishonestly or that he acted beyond his authority. And there is no suggestion that he acted at any time, other than on behalf of Huron and in its interests. In other words, it could not be said that his actions were his own.

[46] There is no assertion of any tortious conduct on the part of Mr. Watsa, apart from a vague connection to a conspiracy. There is a suggestion that his contacts were used to assist in business develop in India. I am not even sure what that means. It is certainly not apparent that it is connecting in any way to any wrongdoing. In any event, as will become apparent momentarily, I intend to strike the conspiracy pleading.

[47] There simply is nothing in the claim that might reasonably lead to a finding of liability on the part of Mr. Watsa. Certainly, the claim, as drafted, does not withstand the high degree of scrutiny required by the jurisprudence when a claim against a corporate representative is advanced.

[48] In the result, the claim against him is struck.

[49] With respect to Ms. Seth, it is not plain and obvious to me that the claim, as drafted, cannot succeed. There is a claim that when she left Higher-Edge's employment she took confidential information that was the property of Higher-Edge and made unauthorized use of it to

benefit herself and Huron. That may not be a particularly strong claim, but it is not my function to assess the odds of success. It is at least legally tenable.

[50] Having said that, I turn now to the balance of the defendants' arguments, which, as will become apparent, result in a substantial narrowing of the claim against Ms. Seth.

Issue Three: The Sufficiency of Pleadings

[51] Despite taking a generous approach to the reading of the claim, I am satisfied that it is deficient in a number of respects, particularly in relation to the allegations of conspiracy and intentional interference with economic relations.

(a) Conspiracy

[52] The common law recognizes two types of conspiracy: conspiracy to injure and conspiracy to perform an unlawful act. See *Cement LaFarge v. B.C. Lightweight Aggregate*, [1983] 1 S.C.R. 452, at p. 471. The plaintiff asserts both here, in the alternative.

[53] More specifically, the plaintiff alleges that (1) the defendants engaged in a conspiracy to injure the plaintiff, or (2) in the alternative, the defendants engaged in a conspiracy to intentionally engage in unlawful conduct to cause Higher-Edge personnel to breach their contractual and fiduciary obligations to Higher-Edge when they knew, or ought to have known, that such conduct would likely cause harm to Higher-Edge.

[54] The essential elements of these two variations of the tort of conspiracy were described by Perell J. in *EnerWorks Inc. v. Glenbarra Energy Solutions Inc.*, 2012 ONSC 414, at paras. 68-69:

[68] The elements of conspiracy to injure are: (1) the defendants acted in combination; (2) the defendants intended to harm the plaintiff; and (3) the defendants' conduct caused harm to the plaintiff.

[69] The elements of conspiracy to perform an unlawful act are (1) the defendants acted in combination; (2) the defendants committed an unlawful act, i.e. a crime, tort, or breach of statute; (3) the defendants knew or should have known that injury to the plaintiffs was likely to occur from their misconduct; and (4) the defendants' misconduct in furtherance of the conspiracy caused harm to the plaintiff.

[55] Perell J. observed, at paras. 76-77 of *EnerWorks*, that in a conspiracy claim each defendant's jeopardy is a function of their membership in the group and their individual contribution(s) to the conspiracy. Each defendant is entitled to know the case they have to meet. That means that each is entitled to know who the alleged co-conspirators are, what the object of the conspiracy was, and the particular acts each defendant was alleged to have committed in furtherance of the conspiracy.

[56] Finlayson J.A. provided instruction, at para. 21 of *Normart*, regarding the proper method for pleading conspiracy:

In *H.A. Imports of Canada Ltd. v. General Mills Inc.* (1983), 42 O.R. (2d) 645 (H.C.), O'Brien J., dealing with the civil action of conspiracy as pleaded, quoted from Bullen, Leake and Jacob's *Precedents of Pleadings*, 12th ed. (London: Sweet & Maxwell, 1975), as follows at pp. 646-47:

The statement of claim should describe who the several parties are and their relationship with each other. It should allege the agreement between the defendants to conspire, and state precisely what the purpose or what were the objects of the alleged conspiracy, and it must then proceed to set forth, with clarity and precision, the overt acts which are alleged to have been done by each of the alleged conspirators in pursuance and in furtherance of the conspiracy; and lastly, it must allege the injury and damage occasioned to the plaintiff thereby.

[57] The crux of the parties' dispute regarding the conspiracy claim is whether it has been pleaded with sufficient clarity and particularity. The defendants contend that it has not, while the plaintiff maintains that it has.

[58] There is no doubt that the plaintiff adequately sets out who the parties are and what their relationships are to one another.

[59] The conspiracy claim is otherwise set out at paras. 39-40 of the claim:

39. The defendants participated in a conspiracy to intentionally harm Higher-Edge. Alternatively, the defendants participated in a conspiracy to intentionally engage in unlawful conduct to cause Higher-Edge personnel to breach their contractual and fiduciary obligations to Higher-Edge, when they knew or ought to have known that such conduct would likely cause harm to Higher-Edge.

40. Each of the defendants actively participated in and/or supported and/or facilitated the planning and execution of the conspiracy.

[60] It is patently obvious that paras. 39-40 do not provide the level of clarity and precision required by the common law. To be fair, however, as the plaintiff pointed out in its factum, the allegations contained at para. 4 of the claim must be read in conjunction with the conspiracy claim:

4. In breach of its duty of honest contractual performance, Huron lied to the plaintiff regarding its intention. In fact, Huron had recruited Seth and the defendants planned to appropriate the plaintiff's goodwill, reputation, processes, resources and marketing strategies such that Huron could reap

the benefits of the plaintiff's long-term investment in the foregoing for little or no cost.

[61] In other words, the plaintiff identified the object of the conspiracy as the appropriation of the plaintiff's goodwill, etc. Huron's participation is said to be the recruitment of Ms. Seth. Ms. Seth's participation is said to have been to terminate her employment with Higher-Edge and abscond with the intellectual property of Higher-Edge. No overt acts are particularized with respect to Mr. Watsa, other than the use of his connections for business development purposes, whatever that means.

[62] In my view, even taking into account the content of para. 4, the conspiracy claim remains inadequately pleaded.

[63] In *Lilleyman v. Bumblebee Foods LLC*, 2023 ONSC 4408, Perell J. drilled down on the level of particularity required in a conspiracy claim, at para. 102:

In pleading a conspiracy, material facts actions (*sic*) in furtherance of the conspiracy must be connected to the actors; in a conspiracy pleading, it is necessary to set out discretely the particular acts of each co-conspirator so that each defendant can know what he or she is alleged to have done as part of the conspiracy. A recitation of a series of events coupled with an assertion that they were intended to injure is insufficient, and it is not appropriate to group some or all of the defendants together into a general allegation that they conspired to injure the plaintiff. (Internal citations omitted).

[64] It should not be necessary for the defendants to have to piece together miscellaneous bits and pieces of paragraphs spread randomly throughout the pleading in order to understand the allegations against them. That is what is necessary here.

[65] Moreover, it is not particularly clear whether the assertion is that the conspiracy was to injure the plaintiff or whether the conspiracy was to commit an unlawful act that had the effect of injuring the plaintiff. I appreciate that these two types of conspiracy were pleaded in the alternative. But it is not enough just to refer to them generally.

[66] If the assertion is a conspiracy to injure, it is not clear to me what injury the defendants are alleged to have sought to bring about. The claim asserts that the defendants conspired to appropriate the plaintiff's goodwill, etc. with the intention to benefit themselves financially. Is that the same as an intention to injure the plaintiff? I do not know, and the defendants should not have to guess.

[67] Moreover, if the assertion is a conspiracy to commit an unlawful act, what is the unlawful act? I gather it is the appropriation or conversion of the plaintiff's intellectual property. If that is the case, is Huron alleged to have engaged in something more than straightforward recruitment? In other words, is Huron alleged to have aided or abetted Ms. Seth in the appropriation? It seems to me that to be a member of a conspiracy, a party would have to know the object or purpose of

the conspiracy and, armed with that knowledge, agree to participate in some way in order to bring it about.

[68] In my view, the conspiracy claim is not entirely without particularity, as the defendants suggest. But it is plain and obvious that it is not sufficient to meet the common law's requirement of clarity and precision.

[69] The conspiracy claim is struck, in the result, under r. 25.11.

(b) *Intentional Interference with Economic Relations*

[70] The Supreme Court has described the tort of intentional interference with economic relations as "the targeting of the plaintiff by the defendant through the instrumentality of unlawful acts against a third party." See *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12, at para. 78.

[71] The tort can be a little difficult to wrap one's head around and it occupies a relatively narrow field. Our law respects the fact that in the business world, a party may sometimes cause loss to another, even intentionally, in the legitimate pursuit of economic self-interest. See *Bhasin v. Hrynew*, 2014 SCC 71, at para. 70:

[72] The essential elements of the tort were described by the Supreme Court in *A.I. Enterprises*, at para. 23, as including:

- (a) an intention to injure the plaintiff;
- (b) interference with the plaintiff's economic/contractual interests by unlawful means; and,
- (c) economic loss on the part of the plaintiff as a result of the defendant's conduct.

See also *Pisani v. Smith*, 2019 ONSC 727, at para. 26.

[73] Again, the crux of the dispute here is whether sufficient material facts have been set out in the claim to support these essential elements.

[74] The alleged tort is the subject of para. 41 of the claim, which provides as follows:

The defendants had knowledge of the enforceable Agreement. They wrongfully interfered with the Agreement and intentionally caused a breach.

[75] I will accept, for the sake of argument, that the alleged intention to appropriate the plaintiff's goodwill, etc. is enough, if made out in the evidence, to satisfy the first essential element, though, again, the claim ought to be clearer about that.

[76] In any event, the plaintiff submits that the second essential element – unlawful means – is supported through the following allegations:

- Huron lied to Higher-Edge in breach of its duty of honest performance (para. 4);
- Ms. Seth took intellectual property owned by Higher-Edge and refused to return it (para. 24);
- Huron breached its duty of honest performance by extending the term of the parties’ agreement, then repudiating it (para. 37); and
- Huron misused Higher-Edge’s confidential information to the detriment of Higher-Edge.

[77] The difficulty with the material facts offered to support the unlawful means element is that they are all directed at Higher-Edge. As I noted above, the gist of the tort is the targeting of the plaintiff through unlawful acts against a *third party*. See *A.I. Enterprises*, at para. 76. See also *EnerWorks*, at para. 84 and *Pisani*, at paras. 28-29. No unlawful act against a third party has been identified by the plaintiff. Indeed, no third party has been identified. Moreover, the manner in which the unlawful act against the third party is said to target the plaintiff has not been identified.

[78] In oral argument, the plaintiff’s counsel suggested that the third parties were the students who were recruited by Huron directly. Two problems are manifest with that suggestion. First, it is unclear what unlawful act was committed against any unnamed student. Second, that theory of the case has not been articulated in the claim.

[79] It is clear and obvious that the claim based on the tort of intentional interference with economic relations, as presently constituted, is legally untenable and insufficiently pleaded. It is, in the result, struck under both r. 21.01(1)(b) and 25.11.

(c) *Unjust Enrichment*

[80] The Supreme Court summarized the doctrine of unjust enrichment in *Moore v. Sweet*, 2018 SCC 52 where Côté J. observed, at para. 35, that it applies “when a defendant receives a benefit from a plaintiff in circumstances where it would be ‘against all conscience’ for him or her to retain that benefit.”

[81] To establish an entitlement to restitution through the unjust enrichment doctrine, the plaintiff must prove that:

- (a) The defendants have been enriched;
- (b) The plaintiff has been correspondingly deprived; and,
- (c) There is no juristic reason for the enrichment.

See *Moore*, at para. 37.

[82] The Statement of Claim addresses the restitution claim at paras. 42-46, which provide:

42. As a direct, proximate and foreseeable result of the defendants' acts and wrongful conduct, Higher-Edge was economically harmed. The defendants profited and benefited economically by way of unconscionable dealings as described in this statement of claim.

43. Huron accepted and retained these profits with knowledge and awareness that, as a result of their wrongdoing, Higher-Edge was harmed. It would be unreasonable/unjust for the University to retain the profits received.

44. Higher-Edge is entitled to restitution for unjust enrichment. The defendants are not entitled to retain any benefits secured through the commission of a legal wrong, including the tortious conduct described above.

45. Higher-Edge requests that the defendants disgorge their profits and account to Higher-Edge for the benefits which they have improperly gained.

[83] Again, the defendants' complaint is that the Statement of Claim fails to plead sufficient material facts to support the essential elements of the claim.

[84] I am not persuaded that the defendants are correct with respect to this aspect of the claim.

[85] Read generously, the assertion is straightforward. The allegation is that Huron and Ms. Seth appropriated intellectual property belonging to Higher-Edge. They used that property to profit. At the same time, Higher-Edge lost profits it would have earned, they allege, had the unlawful appropriation not happened. It would, in the circumstances, be "against all conscience" to permit the defendants to retain their ill-gotten gains.

[86] I have already dismissed the claim on the whole against Mr. Watsa. I have some concern about the viability of this claim against Ms. Seth. It is not clear how she individually profited from the appropriatiopn of Higher-Edge's intellectual property. But presumably that matter can be cleared up during discovery. I am otherwise satisfied that sufficient material facts have been alleged that, if made out, *could* support the granting of relief on the basis of the doctrine of unjust enrichment.

[87] I would, in the result, dismiss the request to strike the claim for restitution pursuant to the unjust enrichment doctrine.

Issue Four: Leave to Re-Plead

[88] In summary, I have struck all claims against Mr. Watsa, as well as the claims grounded in the torts of conspiracy and intentional interference with economic relations, against all defendants.

[89] The defendants urge the court to deny the plaintiff the opportunity to amend its pleading.

[90] The jurisprudence does not favour the defendants on this issue.

[91] Perell J. set out the state of the law in *Stedfasts*, at para. 36:

Where a pleading is struck as defective, leave to amend should only be denied in the clearest cases when it is plain and obvious that no tenable cause of action is possible on the facts as alleged. The usual practice is to grant the plaintiff leave to amend unless it is clear that the plaintiff cannot improve its case by any further and proper amendment.

[92] I have some reservations about the viability of any claim involving Mr. Watsa personally in the factual context outlined in the Statement of Claim. I have similar reservations about the viability of any claim based on the tort of intentional interference with economic relations, given the apparent absence of a third party against whom an unlawful act has been committed. That said, I would not describe the circumstances here as the clearest of cases where it is plain and obvious that no tenable cause of action is possible. The plaintiff will nevertheless have to give serious consideration as to how it proceeds going forward.

[93] Leave is granted to the plaintiff to amend its pleading, as it deems appropriate, with respect to the elements struck by this ruling.

Directions

[94] This action has languished for far too long. Despite having been commenced five years ago, it remains at the pleadings stage. Such delay is unacceptable. The court has a responsibility to manage its resources and to ensure that litigants use those resources efficiently. I therefore make the following directions to move this action forward at a reasonable pace:

- (a) The plaintiff shall have 60 days from the date of this ruling to deliver an amended Statement of Claim;
- (b) The defendants shall have 30 days from the date of service of the claim to file a defence;
- (c) Affidavits of Documents are to be exchanged, along with all Schedule “A” documents, within 90 days of the delivery of the Statement of Defence;
- (d) Examinations for Discovery are to be conducted within six months of the delivery of the Statement of Defence; and,
- (e) The action is to be set down for trial by August 31, 2027.

Costs

[95] The parties may make written submissions on the issue of the costs of this motion, on a 14-day turnaround. The defendants' submissions are to be served and uploaded to CaseCentre by September 4, 2026. The plaintiff's submissions are to be served and uploaded to CaseCentre by September 18, 2026. Submissions are not to exceed two pages in length, not including the parties' Costs Outlines.

C. Boswell J.

Released: August 21, 2026