NOVA SCOTIA COURT OF APPEAL

Citation: *Independent Fisheries Limited v. Unified Fisheries Conservation Alliance*, 2026 NSCA 74

Date: 20261015
Docket: CA 550319
Registry: Halifax

2026 NSCA 74 (CanLII)

Between:

Independent Fisheries Limited and Xiaoming Mao

Appellants

v.

Unified Fisheries Conservation Alliance, Michael Larkin, Bernie Berry, Fisher Direct Ltd., Tyler Nickerson, Sea Well Holdings Limited, and Wesley Nickerson

Respondents

Judges:	Wood, C.J.N.S., Bourgeois and Van den Eynden, JJ.A.
Appeal Heard:	September 15, 2026, in Halifax, Nova Scotia
Facts:	The Unified Fisheries Conservation Alliance (UFCA) and others alleged that Independent Fisheries Limited (IFL) and Xiaoming Mao were involved in a conspiracy to transport, deliver, process, and sell illegal lobster in Nova Scotia. The UFCA claimed that these actions resulted in economic losses exceeding $10,000,000. IFL and Mao requested further particulars from the UFCA to clarify the claims, which the UFCA declined to provide (paras 1-2, 5-11).
Procedural History:	• *Independent Fisheries Limited v. Unified Fisheries Conservation Alliance*, 2026 NSSC 3: Justice Rosinski of the Supreme Court of Nova Scotia dismissed IFL and

Mao's motion to compel the UFCA to provide further particulars (para 3).

Parties' Submissions:

- Appellants (IFL and Mao): Argued that the motion judge failed to apply the correct legal principles, resulting in a refusal to order the UFCA to provide necessary particulars for the civil conspiracy claim. They contended that these particulars were essential to understand and respond to the claims (paras 3-4, 16).
- Respondents (UFCA and others): Asserted that they had pleaded sufficient material facts and that the appellants' requests for particulars amounted to an improper demand for evidence. They argued that the appellants could obtain the information through the discovery process (para 17).

Legal Issues:

- Did the motion judge err in law by failing to apply the correct legal principles for the provision of further and better particulars?
- Should the UFCA be compelled to provide full particulars of the alleged civil conspiracy and the damages claimed?

Disposition:

- Leave to appeal was granted.
- The appeal was allowed with costs.
- The UFCA was ordered to provide the requested particulars, except for the complete list of its members (headnotes, paras 4, 64-66).

Reasons:

Per Bourgeois J.A. (Wood, C.J.N.S. and Van den Eynden, J.A. concurring):

The motion judge erred by not applying the correct legal principles regarding the pleading of civil conspiracy, which requires full particulars under Rule 38.03(3). The judge incorrectly concluded that the information sought by the appellants did not constitute material facts. Additionally, the judge's decision was based on an unsupported factual finding that the UFCA parties did not know the requested particulars. The appellants were

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entitled to know the case they had to meet, and the UFCA's pleadings were deficient in providing necessary details. The court directed the UFCA to respond to the particulars sought, except for the complete list of its members (paras 50-64).

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 66 paragraphs.

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Judges:	Wood, C.J.N.S., Bourgeois and Van den Eynden, JJ.A.
Appeal Heard:	September 15, 2026, in Halifax, Nova Scotia
Held:	Leave to appeal granted and appeal allowed with costs, per reasons for judgment of Bourgeois, J.A.; Wood, C.J.N.S. and Van den Eynden, J.A. concurring
Counsel:	Daniel Watt and Noah Yao for the appellants Richard W. Norman and Matthew Kuzak, for the respondents, Unified Fisheries Conservation Alliance, Michael Larkin, and Bernie Berry Kristen Stallard on behalf of Michael P. Scott, for the respondents, Fisher Direct Ltd., Sea Well Holdings Limited, Tyler Nickerson, and Wesley Nickerson on watching brief

Reasons for judgment:

[1] The Unified Fisheries Conservation Alliance (the "UFCA") along with Michael Larkin and Bernie Berry[1] have commenced legal action against a number of defendants. They allege, amongst other things, the defendants engaged in "a conspiracy or conspiracies to transport, deliver, process, and sell illegal lobster in Nova Scotia". The UFCA parties assert in their claim the economic loss resulting from the defendants' actions are "in excess of $10,000,000 and growing day by day".

[2] Two of the defendants, Independent Fisheries Limited ("IFL") and Xiaoming Mao ("Mao"), were of the view that the plaintiffs' amended Statement of Claim did not set out sufficient facts in relation to the claims, and the alleged damages suffered by the UFCA, its members, Larkin and Berry. They served the UFCA parties with a Demand for Particulars in which they requested further particulars, notably in support of the civil conspiracy claim[2]. The UFCA parties declined to provide most of the requested information. As a result, IFL and Mao brought a motion in chambers seeking an order compelling them to provide the requested particulars.

[3] The motion was heard by Justice Peter R. Rosinski of the Supreme Court of Nova Scotia. In written reasons reported at 2026 NSSC 3, Justice Rosinski dismissed the motion. IFL and Mao now appeal to this Court and allege the motion judge's refusal to order the particulars sought was based upon a failure to apply the governing legal principles. They say the particulars are required to understand and respond to the claims the UFCA parties have made against them.

[4] In short, I agree with the appellants. For the reasons below, I would grant leave and allow the appeal. I would further order the UFCA parties to provide particulars in relation to the demands as identified herein.

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[1] The UFCA, Larkin and Berry advanced common arguments both in the court below and on appeal. For the purposes of these reasons, I will refer to them collectively as the "UFCA parties" or the plaintiffs unless the context requires otherwise.

[2] A Demand for Particulars is a procedural tool which permits an opposing party to request additional material facts or particulars about the claims advanced against them.

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Background

The pleadings

[5] The UFCA describes itself as "an association of commercial fisheries stakeholders calling upon the Government of Canada to establish clear, lasting, responsible, regulatory oversight for all fisheries – commercial, food, social and ceremonial." It is not licensed to fish, buy, sell or process lobster in Nova Scotia. Larkin and Berry hold commercial licences for the harvesting of lobster in Lobster Fishing Area 34 ("LFA 34")[3].

[6] IFL is a buyer and seller of lobster and operates a plant in Sable River, Nova Scotia. Mao is a director and shareholder in IFL. Unless the context requires otherwise, I will refer to IFL and Mao as the appellants in the balance of these reasons.

[7] The sufficiency of the UFCA parties' pleadings was a central issue before the motions judge and on appeal. Accordingly, it is necessary to set out the contents of the amended Statement of Claim[4]. The pleadings allege:

> 5. In recent years, the Department of Fisheries and Oceans ("DFO"), the federal department of the Government of Canada which is responsible for regulating fisheries, has failed to take appropriate and/or effective action to prohibit and sanction the illegal fishing of lobster in Nova Scotia and its sale.
>
> 6. In recent years, the Province of Nova Scotia, which is responsible for regulating the buying, selling, and processing of lobster, has failed to take appropriate and/or effective action to prohibit and sanction the illegal buying, selling, and processing of illegal lobster in Nova Scotia.
>
> 7. During this time, illegal lobster fishing has increased. This activity has threatened and will continue to threaten the stock of lobster available to fishers who have licenses and who participate in the commercial fishery.
>
> 8. Due to the lack of investigatory and/or enforcement efforts on the part of the DFO, UFCA has been obliged **to conduct its own investigations with**

[3] The Department of Fisheries and Oceans has designated lobster fishing areas by specific geographical coordinates. The UFCA parties assert the wrongful conduct of the defendants is in relation to lobster allegedly illegally caught in "LFA 34 and environs", a large area situated off the southerly tip of Nova Scotia.

[4] The UFCA parties had originally filed a Notice of Action and Statement of Claim on November 5, 2024. An Amended Notice of Action and Statement of Claim was subsequently filed on December 18, 2024. It is the latter which will be referenced in these reasons as the "amended Statement of Claim".

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respect to individuals and companies involved in the illegal lobster fishery.

9. UFCA made arrangements to investigate and obtain evidence linking each of the Defendants **to a conspiracy or conspiracies** to transport, deliver, process, and sell illegal lobster in Nova Scotia.

10. The Defendants take delivery of lobster at the government wharf in Saulnierville, Nova Scotia. The lobster obtained by the Defendants at the Saulnierville wharf is not caught by a license-holder and therefore cannot be legally sold.

11. The illegal lobster is transported by various means to a fish plant owned by Independent Fisheries Limited ("Independent") in Sable River, Nova Scotia. Independent knowingly takes delivery of the illegal lobster and subsequently profits from its sale.

(Emphasis added)

[8] The pleadings also make the following allegations:

12. Without limiting the generality of the foregoing, the Plaintiffs state:

    (a) In September and October, 2024, Jason Lamrock[5] knowingly picked-up illegal lobster from the Saulnierville wharf using his white 5-Tonne truck.

    (b) Jason Lamrock transported the illegal lobster either to his property or to Independent Fisheries Limited.

    (c) When Jason Lamrock transported the illegal lobster to his own property, he transferred the lobster into a white reefer truck.

    (d) The white reefer truck was owned by Tyler Nickerson, Fishers Direct Ltd. and/or Sea Well Holdings Limited. The white reefer truck was driven by Tyler Nickerson's brother, Wesley Nickerson.

    (e) Wesley Nickerson knowingly delivered the illegal lobster to Independent Fisheries Limited.

    (f) In either instance, once the illegal lobster was delivered to Independent Fisheries Limited, Independent Fisheries Limited knowingly took receipt of the illegal lobster.

[5] Jason Lamrock is a named defendant in the claim. The record demonstrates the UFCA parties have taken out default judgment against him given his failure to file a Statement of Defence.

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[9] And further:

> 13. To the extent that the personal defendants are directors or officers of the corporate defendants, the personal defendants are aware of the corporations' illegal activity. They approve and profit from it.
>
> 14. The Defendants' actions are contrary to the *Fisheries Act* and its associated *Regulations*.
>
> 15. The lobster which is illegally caught for sale (i.e. out of season and without a license) is part of a common or public resource. The conservation of this common resource was once one of the paramount goals of the DFO.
>
> 16. The conservation of this common resource is a paramount goal of the commercial fishers of Nova Scotia as represented by the UFCA. By undermining the regulatory and conservation goals of the *Fisheries Act* and its regulations, the Defendants' actions **and conspiracy** constitute a public nuisance.
>
> 17. The Plaintiffs state that the Defendants acted in combination through unlawful conduct that was directed at causing damage to the Plaintiffs by circumventing the legal lobster market and did so cause damage to the Plaintiffs.
>
> (Emphasis added)

[10] In addition, the amended Statement of Claim asserts:

- The defendants' actions, jointly and severally, constitute an intentional interference "with the UFCA and its members' economic interests";
- The defendants' actions constitute unjust enrichment;
- The defendants intentionally interfered with the lobster, preventing licensed fishers from obtaining them, constituting "trespass";
- The economic losses caused by the defendants' actions "are currently estimated to be in excess of $10,000,000 and growing day by day";
- Larkin and Berry have suffered direct financial harm as a result of the defendants' conduct, including but not limited to diminished catches of lobster; and
- The defendants' conduct also constitutes a "novel tort".

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[11] The UFCA seeks the following relief:

- a declaration that the defendants' actions constitute an illegal and/or civil conspiracy;
- an injunction enjoining the defendants from continuing to violate the *Fisheries Act* and its regulations;
- a declaration that the defendants' actions have caused damages in excess of $10,000,000 to the UFCA and its members;
- general and special damages; and
- costs on a solicitor and client basis.

[12] Larkin and Berry request the same relief as the UFCA, with one exception. They do not seek a declaration the quantum of damages caused by the defendants' actions is in excess of $10,000,000.

The Demand for Particulars

[13] The appellants served a Demand for Particulars requesting the UFCA parties provide further particulars of the allegations in the amended Statement of Claim. The UFCA parties provided a Response in which they declined to answer the bulk of the requests, asserting:

> ...that the information sought does not constitute material fact(s) which the Plaintiffs must plead and/or that sufficient material fact(s) are already pleaded and/or the information sought or any further information constitutes evidence, including evidence upon which material fact(s) pleaded will be proven and/or is information already within the knowledge of the Defendant, and/or otherwise is not the proper subject of a Demand for Particulars.

[14] At no place in the Response, did the UFCA parties assert the refusal to provide the requested information was because it was unknown to them.

[15] The appellant's motion sought an order compelling the UFCA parties to provide further and better particulars as set out in the following paragraphs of their Demand:

> 1. With respect to paragraph 1 [of the amended Statement of Claim], full and complete particulars of:

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c. each of the "commercial fisheries stakeholders" alleged to comprise the membership of UFCA.

. . .

4. With respect to paragraph 9, full and complete particulars of the facts upon which it is alleged that the Defendants engaged in an alleged "conspiracy or conspiracies" to transport, deliver, process, and sell illegal lobster in Nova Scotia, including, and without limiting the generality of the foregoing:

a. the names of all the alleged conspirators, including but not limited to the Defendants;

. . .

d. the facts upon which it is alleged that the alleged conspirators' conduct was directed towards the Plaintiffs; and

. . .

5. With respect to paragraph 10, full and complete particulars of the alleged delivery of illegal lobster to the Defendants at government wharf in Saulnierville, Nova Scotia, including, without limiting the generality of the foregoing:

a. the facts upon which it is alleged that:

i. IFL took delivery of illegal lobster at the government wharf; and

ii. Mao took delivery of illegal lobster at the government wharf;

b. the person, entities and/or vessels that allegedly catch or caught the illegal lobster that is allegedly delivered to the Defendants at the government wharf;

c. the date(s) and time(s) when the aforesaid persons, entities and/or vessels caught the allegedly illegal lobster;

. . .

e. the persons, entities and/or vessels that allegedly have (at any time) delivered or facilitated the delivery of the allegedly illegal lobster to the Defendants or any of them at the government wharf;

f. the persons, entities and/or vessels that allegedly have (at any time) received or facilitated the receipt of the allegedly illegal lobster at the government wharf for or on behalf of the Defendants or any of them;

g. without limiting the generality of the foregoing, the persons, entities and/or vessels that have delivered or facilitated the delivery of the allegedly illegal lobster to Jason Lamrock at the government wharf;

. . .

j. the date(s) and time(s) at which illegal lobster is, was, or has been delivered to the Defendants or any of them at government wharf.

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6. With respect to paragraphs 11 and 12, full and complete particulars of how the alleged illegal lobster is transported to the fish plant owned by IFL in Sable River, Nova Scotia (the "Plant"), including, without limiting the generality of the foregoing:

> a. the date(s) and time(s) at which the illegal lobster is alleged to have been picked-up by Jason Lamrock at the Saulnierville wharf using his white 5-tonne truck;
>
> . . .
>
> c. the date(s) and time(s) at which the illegal lobster is alleged to have been delivered to Jason Lamrock's property in Jason Lamrock's white 5-tonne truck;
>
> d. the date(s) and time(s) at which the illegal lobster was transferred to the "white reefer truck" allegedly owned by Tyler Nickerson, Fisheries Direct Ltd., and/or Sea Well Holdings Limited;
>
> e. the date(s) and time(s) at which the illegal lobster is alleged to have been delivered to IFL at the Plant by Jason Lamrock using his white 5-tonne truck;
>
> f. the date(s) and time(s) at which the illegal lobster is alleged to have been delivered to IFL at the Plant by Wesley Nickerson using the white reefer truck;
>
> . . .
>
> i. the facts upon which it is alleged that IFL "knowingly" takes delivery of illegal lobster from Jason Lamrock, Wesley Nickerson, or others; and
>
> . . .

7. With respect to paragraph 13, full and complete particulars of the facts upon which it is alleged that:

> a. Mao is aware of IFL's or any other corporate Defendant's allegedly illegal activity;
>
> b. Mao approves of IFL's or any other corporate Defendant's allegedly illegal activity; and
>
> c. Mao profits from IFL's or any other corporate Defendant's allegedly illegal activity.

. . .

12. With respect to paragraph 22, full and complete particulars of the alleged economic loss suffered by the Plaintiff and each of its members as a result of the Defendants' alleged actions, including, without limiting the generality of the foregoing:

> a. the facts upon which it is alleged that the Defendants' actions have caused and will continue to cause an economic loss to:

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> i. UFCA;
>
> ii. UFCA's "members";
>
> . . .
>
> c. the names of each of UFCA's aforementioned "members" who allegedly have suffered economic loss as a result of the Defendants' actions;
>
> . . .
>
> e. the factual basis for the calculation that the alleged losses are currently estimated to be in excess of $10,000,000; and
>
> f. the factual basis upon which it is alleged that the Plaintiff's losses in excess of $10,000,000 "and growing" are caused by:
>
> i. IFL; and
>
> ii. Mao.
>
> 13. With respect to paragraph 23, full and complete particulars of the alleged "direct financial harm" suffered by the individual Plaintiffs, including, without limiting the generality of the foregoing:
>
> a. the factual basis on which it is alleged that the individual Plaintiffs have experienced "diminished catches of lobster";
>
> b. the factual basis on which it is alleged that there has been a "significant reduction of lobster" resulting from the Defendants' alleged unlawful conduct; and
>
> c. the quantum of financial harm alleged to have been suffered.
>
> 14. With respect to the relief sought at paragraph 26, full and complete particulars of the special damages sought by the individual Plaintiffs.

[16] In the court below the appellants argued the *Civil Procedure Rules*, particularly Rule 38.03(3), and case authorities demonstrate the information being sought ought to have been included in the amended Statement of Claim. They submitted that given the nature of the allegations, the particulars were not only appropriate, but also necessary to prepare a Statement of Defence.

[17] In response, the UFCA parties asserted they had plead sufficient material facts and the appellants' requested particulars amounted to an improper request for evidence. They argued the appellants could obtain the information through the discovery process, after the filing of their defence.

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Legal Principles

[18] It is useful to set out the legal principles relevant to assessing the issues raised on appeal.

General principles of pleading

[19] The *Civil Procedure Rules* govern the content of pleadings. Rule 4.02(4) sets out the required contents of a statement of claim:

> **(4)** The statement of claim must notify the defendant of all the claims to be raised by the plaintiff at trial, conform with Rule 38 - Pleading, and include each of the following:
>
> (a) a description of the parties;
>
> (b) a concise statement of the material facts relied on by the plaintiff, but not argument or the evidence by which the material facts are to be proved;
>
> (c) reference to legislation relied on by the plaintiff, if the material facts that make the legislation applicable have been stated;
>
> (d) a concise statement of the remedies claimed, except costs.

[20] Rule 38.02 sets out the general principles of pleading:

> **(1)** A party must, by the pleading the party files, provide notice to the other party of all claims, defences, or grounds to be raised by the party signing the pleading.
>
> **(2)** The pleading must be concise, but it must provide information sufficient to accomplish both of the following:
>
> (a) the other party will know the case the party has to meet when preparing for, and participating in, the trial or hearing;
>
> (b) the other party will not be surprised when the party signing the pleading seeks to prove a material fact.
>
> **(3)** Material facts must be pleaded, but the evidence to prove a material fact must not be pleaded.
>
> **(4)** A party may plead a point of law, if the material facts that make it applicable are also pleaded.

[21] A statement of claim must include the necessary material facts for each cause of action alleged. A drafter is advised to consider the necessary elements of the cause or causes of action advanced and identify what facts will need to be

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proven to establish those claims. Those necessary facts are material and must be plead. As the case authorities demonstrate, a failure to plead material facts may result in an opposing party seeking further particulars, or requesting a claim be struck.

Heightened requirements when alleging unconscionable conduct

[22] Rule 38.03(3) places a heightened requirement on a claimant to "provide full particulars of a claim alleging unconscionable conduct, such as fraud, fraudulent misrepresentation, misappropriation, or malice." A claim of civil conspiracy is a claim involving unconscionable conduct and the resulting pleading should comply with this enhanced obligation.

[23] This Court has provided direction regarding the requirements when pleading civil conspiracy. In *R. Baker Fisheries Ltd. v. Atlantic Clam Harvesters Ltd.*, 2002 NSCA 82, the Court noted that a statement of claim which fails to plead the necessary elements of the tort of conspiracy is deficient.

[24] In that case, a plaintiff filed a claim alleging corporate defendants had engaged in a civil conspiracy. The operating minds of the corporate defendants (Muller, Pollock and deWaard) were included in the claim as alleged participants in the conspiracy. The defendants served a demand seeking further and better particulars supporting the alleged conspiracy. The plaintiff refused to provide all of the requested particulars. A motion to have the statement of claim struck followed, which was granted.

[25] In upholding the chambers judge's decision, Justice Saunders wrote:

> [17] The appellants' statement of claim was struck on the basis that it failed to plead the necessary elements of the tort of conspiracy. It is clear from the judge's decision that he understood the essential requirements in pleading such a claim and fairly concluded that in this case the appellants' statement of claim was deficient. In doing so he applied the correct legal principles reflected in such authorities as *Normart Management Ltd. v. West Hill Redevelopment Co.* (1998), 37 O.R. (3d) 97 (C.A.).
>
> [18] Nunn, J. specifically identified the defects in the appellants' pleading. For example, the appellants **failed to allege any agreement** between the respondents and the other defendants to conspire against the appellants. The statement of claim **only makes vague references to the fact that the defendants "met, planned and conspired"** which may hint at some **agreement but does not allege the details or particulars of the agreement**. Neither does it allege the purpose or object of the alleged conspiracy. The appellants have **failed to allege any specific**

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> **overt acts undertaken by the respondents in furtherance of the alleged conspiracy**. Neither does the statement of claim **specify any particular action taken by the individual respondents, Messrs. Muller, Pollock and deWaard, in their personal capacities** in furtherance of the alleged conspiracy. Further, the appellants have failed to allege **any particular injury or damages suffered on account of the alleged conspiracy**.
>
> (Emphasis added)

[26] In *Normart*, the Ontario Court of Appeal found the following general principles of pleading civil conspiracy were still "good law":

> In *H.A. Imports of Canada Ltd. v. General Mills Inc.* (1983), 42 O.R. (2d) 645, 150 D.L.R. (3d) 574 (H.C.J.), 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.
> >
> > (Emphasis added)

[27] Although Justice Saunders' articulation of the above principles was a quarter-century ago, they continue to apply in this province when assessing if an allegation of civil conspiracy has been properly plead.

[28] In *Layes v. Bowes*, 2019 NSSC 298 ("*Layes*") and *DLF Law Practice Incorporated v. McDonald*, 2025 NSSC 71 ("*DLF*"), the above principles were applied. In both decisions, it was acknowledged that for a claim of civil conspiracy, the following must be set out in the pleadings:

1. All of the parties to the conspiracy must be identified and their relationship to each other described;
2. Agreements between the various defendants must be pleaded with all facts material to such agreements including the parties to each agreement, the date of the agreement and the object and purpose of each agreement;

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3. The overt acts of each of the alleged conspirators in pursuance or furtherance of the conspiracy must be pleaded with clarity and precision, including the times and dates of such overt acts; and
4. The pleading must allege the injury and the damage occasioned to the plaintiff and special damages in the sense of a monetary loss which the plaintiff has sustained must be pleaded and particularized.

[29] These requirements are consistent with the principles long adopted by this Court which govern the pleading of civil conspiracy. As will be seen, they also inform the assessment of whether a plaintiff seeking to advance such a claim should be compelled to provide further particulars.

[30] There are important policy reasons supporting Rule 38.03(3)'s requirement for a party alleging unconscionable conduct to plead enhanced "material facts". Firstly, when filed with the court, pleadings become publicly accessible and the allegations made therein are often more broadly disseminated. At this stage of the litigation process, the pleadings have not been tested, and may, after the rigour of examination, not be demonstrated to be true. Allegations of unconscionable conduct should not be advanced lightly. Before making claims which may have the effect of publicly calling into question the integrity of an opposing party or the legality of their actions, a claimant should be prepared to fully plead the facts underpinning their allegations.

[31] Additionally, the clarity provided by full particulars of a claim asserting unconscionable conduct will often assist in advancing the litigation in a time effective and less costly manner. I agree entirely with Stratas, J.A. who, in assessing an alleged claim of abuse of public office (also unconscionable conduct), stated[6]:

> [29] My analysis of the statement of claim shows that, in its present form, it does not plead all of the elements of the tort . . . with necessary material facts and particulars, especially on the mental state, knowledge and intentions of the Port Authority. **Unless these matters are addressed, this action, which might have merit, will flounder: we will see more pleadings motions, documentary and oral discoveries complicated by objections based on relevance, and an objection-laden trial festooned with delays caused by confusion and uncertainty about what exactly is in issue**. To avoid this, Adventure Tours' revised statement of claim should identify each action that is alleged to constitute the tort of abuse of public office **and plead, with all necessary material facts**

[6] *St. John's Port Authority v. Adventure Tours Inc.*, 2011 FCA 198.

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> **and particularity, each essential element of the tort concerning the action**. There may be a way to group certain actions together or to raise the issue of a pattern of conduct, but the requirements of all necessary material facts and particularity concerning all essential elements of this tort must still be met.
>
> (Emphasis added)

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[32] Bald assertions in a claim alleging unconscionable conduct without supporting particulars are "insufficient to trigger the defendant's obligation to file a defence, let alone its later obligation to disclose its documents and produce a witness for examination in discoveries. The price of admission to documentary and oral discoveries is the service and filing of an adequately particularized pleading that asserts all of the essential elements of a viable cause of action."[7]

Availability and function of particulars

[33] Rules 38.08 and 38.09 address when and how particulars are sought and include:

- A party may only demand a statement that the other party could have included in the original pleading;
- A party must not demand evidence or a description of evidence;
- A judge may order a party to provide a further or better statement of a claim or defence;
- A response to a demand for particulars becomes part of the pleadings; and
- A party refusing to provide an answer to a demand must state the reason for the refusal in the response.

[34] Chief Justice Glube canvassed the purpose of particulars in *M.A. Hanna Company v. Nova Scotia (Office of the Premier)*, 1990 CanLII 4219:

> The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises and incidentally to reduce costs . . . This function has been stated in various ways as follows:
>
> (1) to inform the other side of the nature of the case they have to meet as distinguished from the mode in which that case is to be proved;

[7] *St. John's*, para. 63.

> (2) to prevent the other side from being taken by surprise at the trial;
>
> (3) to enable the other side to know what evidence they ought to be prepared with and to prepare for trial;
>
> (4) to limit the generality of the pleadings or the claim of the evidence;
>
> (5) to limit and define the issues to be tried, and as to which discovery is required;
>
> (6) to tie the hands of the party so that he cannot without leave go into any matters not included. But if the opponent omits to ask for particulars, evidence may be given which supports any material allegation in the pleadings.[8]

[35] And further:

> **It is no objection to an application for particulars that the applicant must know the true facts of the case better than his opponent**. He is entitled to know the outline of the case that his adversary will try to make against him, which may be something very different from the true facts of the case. His opponent may know more than he does; in any event it is well to bind him down to a definite story. **Particulars will be ordered whenever the master is satisfied that without them the applicant cannot tell what is going to be proved against him at the trial**. But how his opponent will prove it is a matter of evidence of which particulars will not be ordered.
>
> (Emphasis added)

[36] Notwithstanding the above Rules and authorities, it is without dispute that a motion judge has the discretion to determine whether further particulars should be ordered. However, as with all discretionary decisions, a motion judge's direction must be anchored in the correct legal principles.

[37] The extent of the particulars ordered is informed by the nature of the claim being made, whether the pleadings have complied with the obligation to set out the required material facts and whether any particulars already provided are sufficient to permit a responding party to meet its own obligation under Rule 38.02 – in the case of a defendant, to set out in its pleadings "all defences or grounds" it intends to raise at trial.[9]

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[8] Quoting and adopting the English Rules of the Supreme Court.
[9] *Milne v. Twin Mountain Construction Ltd.*, 2003 NSCA 41 at paras. 11 and 12.

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The decision under appeal

[38] In his reasons the motion judge set out the nature of the claims being advanced including the tort of civil conspiracy. He noted the procedural history relating to the Demand for Particulars being made, and that the UFCA parties had provided a response "in which they answered in some cases and did not answer in other cases, because they took the position that the Demands were not in relation to 'material facts', or they were simply unable to provide the requested Particulars".[10]

[39] The motion judge acknowledged a claim of civil conspiracy was "unconscionable conduct" as contemplated in Rule 38.03(3) and said he was relying on the principles set out in *DLF*. He then concluded:

> [22] It would be unreasonable, and contrary to the spirit of our *Civil Procedure Rules* and jurisprudential tradition, to allow the Defendants to unreasonably "straitjacket" the Plaintiffs' legal position/pleadings, by insisting that the Plaintiffs' pleadings include purported material facts which are likely to be exclusively within the knowledge of the Defendants, their agents and proxies and others similarly situated.

[40] In declining to compel the UFCA to provide particulars of its members, the motion judge wrote:

> [32] Not all members of the UFCA are directly financially impacted by the Defendants' conduct as referenced in the pleaded allegations against the Defendants.
>
> [33] Moreover, the specific identities of the membership of the UFCA who may have been financially impacted by the Defendants' unlawful actions may not [be] precisely capable of identification at this time, because the scope and breadth of the Defendants' unlawful activities are not known or cannot be known to the Plaintiffs at this time. Therefore, to that extent, their identities are not "material facts" necessary to be pleaded, or otherwise a basis for an Order for further and better/full particulars.

[41] In declining to order the UFCA parties to provide responses to the demands relating to the alleged civil conspiracy, the motion judge concluded the information requested (such as the identity of the conspirators, the nature of the agreements between them, and the dates, times and nature of the appellants' overt actions taken in furtherance of the conspiracy) were not material facts and need not be provided or plead.

[10] Motion judge's decision, at para. 19.

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[42] The motion judge further based his decision not to compel particulars relating to the civil conspiracy claim on the view that as conspirators, the information was likely already in the possession of the appellants or was unknown to the UFCA parties. He noted:

> [47] Moreover, those involved in conspiracies have compelling reasons not to see any public light shed upon their activities.
>
> . . .
>
> [53] It is not in the interests of justice to impose upon the Plaintiffs in these circumstances, an obligation to make answer for claimed material facts that are, for legitimate reasons, **simply not within their present knowledge** or otherwise not reasonably available to them, except through the unfolding of the litigation process herein.
>
> . . .
>
> [56] **Demand #5**- "With respect to paragraph 10, full and complete particulars of the alleged delivery of illegal lobster to the Defendants at government wharf in Saulnierville, Nova Scotia, including, without limiting the generality of the foregoing [a number of detailed factual matters, which can be summarized as dates and times, persons who were involved and locations - which I conclude however do not constitute material facts, but rather constitute evidence, **and which information is likely readily within the knowledge of the Defendants** who would be expected to create and maintain ongoing records in this respect.]"
>
> (Emphasis added)

[43] With respect to the requests relating to the particularization of the damages being sought by the UFCA parties, the motion judge was of the view the request was for evidence, not material facts, and therefore need not be provided.

Issues

[44] In their Notice of Application for Leave to Appeal and Notice of Appeal (Interlocutory), the appellants set out the following grounds of appeal:

> (1) The Learned Motion Judge erred in law by:
>
> a. failing to apply the correct legal principles and test for the provision of further and better particulars; and
>
> b. as a result of the failure to apply the correct legal principles and test, failing to order the Plaintiffs to provide full particulars of their claims alleging unconscionable conduct and, in particular: full particulars of the material facts of the alleged civil conspiracy; the identities of UFCA's unidentified members on behalf of whom UFCA purports to claim

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> damages and seek relief; and the damages allegedly suffered by such unidentified members and the named Plaintiffs.
>
> (2) The Learned Motion Judge erred in law, committed palpable and overriding errors of fact, and/or rendered a patent injustice by drawing inappropriate or unwarranted inferences of fact and by otherwise making unwarranted findings of fact in the absence of a supporting evidentiary record.

[45] After having considered the arguments advanced on appeal, I would re-state the issues as follows:

1. Should leave to appeal be granted?
2. Did the motion judge err in his consideration of whether further and better particulars should be provided?
3. Should this Court direct that the UFCA parties respond to the particulars sought?

Standard of Review

[46] The issue of whether leave to appeal should be granted is one of first instance. There is no standard of review.

[47] The standard of review applicable to discretionary orders is well-established. This Court will not intervene unless an appellant is able to demonstrate an error in principle, a palpable and overriding factual error or a failure to exercise the discretion judicially (which includes acting arbitrarily or being so clearly wrong as to amount to an injustice) (*Canada (Transportation Safety Board) v. Carroll-Byrne*, 2022 SCC 802).

Analysis

Should leave to appeal be granted?

[48] The test to grant leave to appeal an interlocutory decision is not in dispute. This Court will not grant leave unless an appellant has raised an arguable issue, being an issue which could result in the appeal being allowed.

[49] As the subsequent reasons demonstrate, the appellants have raised arguable issues. I would accordingly grant leave to appeal.

Did the motion judge err in his consideration of whether further and better particulars should be provided?

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[50] The motion judge declined to compel the UFCA parties to provide further particulars. However, this discretionary decision was founded on legal error.

[51] I have already set out the principles governing the pleading of civil conspiracy and the necessity for full particulars to be provided. Although the motion judge said he was relying on those principles (as set out in *DLF*) he did not apply them. He found the information being sought by the appellants relating to the civil conspiracy did not constitute "material facts", yet they were the type of "full particulars" the case authorities, including from this Court, have directed must be included in the pleadings.

[52] Before this Court, the UFCA parties argue the motion judge was not bound to follow *DLF* and *Layes*, submitting there was another line of case authorities that permitted him to take a more contextual and less rigid approach. They argue it was not an error for the motion judge to anchor his discretion in decisions from other jurisdictions.

[53] I find the UFCA parties' submission in this regard unpersuasive. Firstly, there is nothing in the motion judge's reasons that support the premise he adopted another line of authority regarding the pleading of civil conspiracy. Indeed, he specifically said he was relying on the principles in *DLF*. Secondly, even if the motion judge was guided in some fashion by decisions from other jurisdictions, he was bound to follow Rule 38.03(3) and the direction of this Court as to pleading civil conspiracy.

[54] In addition to the above, the motion judge's decision not to order the sought particulars was based, at least in part, on a factual finding that had no evidentiary support. In several instances, the motion judge concluded the particulars being sought were not known by the UFCA parties. As noted earlier, in their Answer to Demand for Particulars, the UFCA parties set out their reasons why they declined to provide the requested particulars. Their refusal was not based on an asserted lack of knowledge. In any event, it is difficult to ascertain how the UFCA parties would not have knowledge of at least some of the sought particulars, given that it had undertaken surveillance of the defendants, and had sufficient information to calculate the economic losses arising from the alleged conspiratorial actions were in excess of $10,000,000.

[55] These two errors alone are sufficient to warrant setting aside the motion judge's decision. I would allow the appeal on this basis. It is not necessary to

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address the further concerns the appellants raised on appeal with respect to the motion judge's analysis.

> *Should this Court direct that the UFCA parties respond to the particulars sought?*

[56] This Court has a complete record of the arguments and evidence advanced on the motion. We have heard additional submissions on appeal. We are well-placed to undertake an assessment of whether the UFCA parties ought to answer the demands.

[57] The first step in the analysis is to consider the nature of the claim being advanced. As noted throughout, there is no dispute the claim alleges unconscionable conduct in the nature of a civil conspiracy. The amended Statement of Claim asserts the appellants have participated in one or more conspiracies involving the buying, selling, transport and processing of lobster illegally caught in LFA 34 "and environs". The UFCA makes these allegations based, at least in part, on surveillance it conducted at unspecified times, at unspecified places and of unspecified people.

[58] The amended Statement of Claim says the appellants' actions have "caused and will continue to cause an economic loss to the UFCA and its members and to anyone involved in the lobster fishery". These losses, allegedly caused by the appellants are asserted to be in excess of $10,000,000 and are increasing "day by day". This suggests that not only is the alleged conspiracy or conspiracies extensive in terms of the value of the "illegal" lobster caught, but it is, or they are ongoing. Yet the amended Statement of Claim only identifies actions undertaken in furtherance of a conspiracy at unspecified times in September and October of 2024.

[59] The UFCA parties are seeking general and special damages. However, it is not clear from their pleadings whether or how those damages are related to the growing $10,000,000 economic loss caused by the appellants' alleged conspiratorial actions. It is not clear, at least on UFCA's part on whose behalf, amongst its members, it is bringing a claim because of damages they have suffered due to the appellants' conspiratorial conduct.

[60] From the appellants' perspective, are they facing one conspiracy or more? If multiple conspiracies, are the alleged co-conspirators the same or different in each? How can the appellants attempt to establish the lobsters in question were legally

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caught, and therefore legally transported, bought and processed, if the identity of the fishers is not plead? What is being alleged that Mao, in his personal capacity, has done in furtherance of a conspiracy or conspiracies?

[61] The amended Statement of Claim does not set out with clarity and precision the basis on which the claim of civil conspiracy is being advanced. It does not include full particulars as required by Rule 38.03(3). At present, the appellants would be precluded from understanding the nature of the damages being sought against them and knowledgably defending against what are vague allegations.

[62] The UFCA parties are obligated to plead full particulars supporting their claim of civil conspiracy. They have not done so. Their response to the Demand for Particulars does not contend they are unaware of the information being requested. They made no such assertion on appeal. Rather, their argument rests on the premise that the information is either not "material facts" or is already in the knowledge of the appellants. Neither is a satisfactory response.

[63] The amended Statement of Claim is deficient. The UFCA parties have not demonstrated why this Court should exercise its discretion not to order the particulars, which ought to have been plead, from being provided.

[64] With one exception, the UFCA parties must respond to the particulars set out in paragraph [15] above. A response to Demand 1 is not required. A complete list of all members of the UFCA is not required – Demand 12 (c) compels the identity of those members on whose behalf damages are being claimed, which is sufficient. The UFCA parties shall provide their responses within 30 days from the release of the Court's order.

Disposition

[65] For the reasons above, I would allow the appeal. I would further direct that the respondents UFCA, Larkin and Berry respond to the requests for particulars as directed in these reasons.

[66] Costs awarded in the court below should be reversed and paid to the appellants. In this Court, the appellants sought costs of $2,000.00. As such, I would order the UFCA, Larkin and Berry pay the appellants costs on the appeal of $2,000.00, inclusive of disbursements.

Bourgeois, J.A.

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Concurred in:

Wood, C.J.N.S.
Van den Eynden, J.A.

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