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COURT OF QUEEN'S BENCH OF MANITOBA

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	)	
	)	JUDGMENT DELIVERED:
	)	September 4, 2020

JOYAL C.J.Q.B.

I. INTRODUCTION

[1] In the context of this complex multi-party action, where case management has been designated, I as the case management judge, have been asked to make a number of procedural determinations flowing from motions brought by both the plaintiff and the

defendants. These various motions were, for the most part, heard on consecutive days and all were heard within a period of one week in June 2020.

[2] As part of that same cluster of motions, I have already released my reasons in ***Winnipeg (City) v. Caspian Projects Inc. et al.***, cited as 2020 MBQB 120, in which I addressed the plaintiff's motion for non-party production pursuant to Queen's Bench Rule 30.10 and the defendants' motion to strike significant portions of the plaintiff's supporting affidavits.

[3] The contested motions which I address in this judgment include:

- the defendants' motion to strike the plaintiff's statement of claim;
- the defendants' motion for further and better particulars (argued in the alternative to their motion to strike the statement of claim);
- the plaintiff's motion to amend its statement of claim;
- a motion brought by the "Sheegl defendants" (as defined below) for severance; and
- a motion brought by the "Sheegl defendants" to strike the cross-claim brought by Patrick Dubuc, 8165521 Canada Ltd. operating as PHGD Consulting, operating as PJC Consulting, Peter Chang and 2316287 Ontario Ltd. (the "Consultant Defendants").

[4] Given that some of the questions and issues in respect of the above contested motions needed determinations prior to being able to meaningfully address what had been the plaintiff's already-scheduled motion for non-party production, I had earlier

provided in the case of most of these motions, oral dispositions "with reasons to follow". These are those reasons.

II. BACKGROUND AND CONTEXT

[5] The City has commenced an action against the defendants in respect of a fraudulent scheme which the City alleges was perpetrated by the defendants on the City in the course of the redevelopment of, amongst other locations, the former Canada Post Building located at 266 Graham Avenue, in Winnipeg. That building was redeveloped for use as the Winnipeg Police Service Headquarters (the "WPSHQ"). The redevelopment project took place from approximately 2011 to 2014 (the "WPSHQ Project").

[6] The City claims that the defendants conspired to defraud the City and to obtain monies under false pretenses during the WPSHQ Project by way of a fraudulent invoicing scheme (the "Scheme"), which consisted of:

a) creating fraudulent quotes, invoices, change orders, contemplated change notices, requests for progress payments and progress payments;

b) altering bona fide quotes and invoices;

c) approving these fraudulently-created and/or fraudulently-altered quotes, invoices, change orders, contemplated change notices, requests for progress payments and progress payments; and

d) paying secret commissions and/or other benefits ("Kickbacks") to the defendants and other unknown persons in return for their participation in the Scheme.

[7] Included as various named defendants in the City's claim are contractor principals and consultant principals who, the City alleges, controlled and directed the contractors and consultants who perpetrated the fraudulent Scheme. Included amongst the named defendants are Caspian, Armik Babakhanians, Shaun Andre Babakhanians, Jenik Babakhanians, Triple D Consulting Services Inc. and Pamela Anderson (whom the City collectively refers to as the "Caspian Defendants"). Included amongst the other defendants are the defendants Phil Sheegl, FSS Financial Support Services Inc. and 2686814 Manitoba Ltd. (whom the City collectively refers to as the "Sheegl Defendants"). The City notes the fiduciary duties attaching to Sheegl who, at the relevant time, was an officer of the City.

[8] The theory that underlies the City's claim is that the Sheegl Defendants received a bribe from the Caspian Defendants to arrange for Caspian to be awarded the WPSHQ contract in exchange for secret commissions and benefits. The City alleges that the contractor defendants and the Consultant Defendants conspired to defraud, and did defraud, the City through a Scheme primarily related to the alteration or creation of invoices containing misrepresentations. These were allegedly submitted to the City (or used to support progress requests submitted to the City) and paid by the City.

[9] With respect to Adjeleian Allen Rubeli Limited ("A.A.R."), the City claims that A.A.R. and its employees were either a party to the alleged Scheme or, in the alternative, were negligent in not noticing the fraudulent invoices and in approving the Caspian progress payment requests.

[10] The full particulars of the Scheme are not yet known to the City, but the City says they are within the knowledge of the defendants.

[11] This claim by the City follows an earlier RCMP investigation and a Crown decision to not proceed with a criminal prosecution. In that regard, it was in or around 2014, that the RCMP commenced its investigation into the WPSHQ Project. That RCMP investigation was designated as Project Dalton ("Project Dalton"). In the course of Project Dalton, the RCMP seized documents, notes, correspondence, records and other particulars (the "Seized Documents") from the defendants, including Caspian. Project Dalton was completed in or around December 2019 at which time the Manitoba Prosecution Service declined to authorize criminal charges.

[12] The Seized Documents remain in the possession, control and/or power of the RCMP. As part of its earlier-mentioned motion for non-party production (see para. 2 above), the City had persuasively asserted that the Seized Documents are relevant to matters in issue within these proceedings insofar as they relate to the defendants' involvement in the WPSHQ Project and the Scheme alleged above. In addition to underscoring their relevance, the City also successfully argued that it would be unfair for it to proceed without access to and production of the documents at this admittedly earlier stage of the proceeding. The Seized Documents include but are not limited to design development submissions, Caspian invoicing and accounting practices, subcontractor invoicing, Caspian correspondence with subcontractors, construction meeting minutes and change orders.

[13] Pursuant to its motion for Rule 30.10 non-party production, the City was granted an order providing it immediate access to (and permission to copy) all such documents as mentioned above and any financial, accounting or banking documentation seized by the RCMP from the defendants, including any records obtained through production orders and statements voluntarily received in the course of its investigation.

[14] Since the City's statement of claim was filed, and even prior to this Court's Order granting it access to the documents seized by the RCMP, the City had received further information and documentation. That information suggests that the City paid more than 24 million dollars to Caspian in the course of the WPSHQ Project in connection with invoices of Fabca Projects Ltd. ("Fabca"). These invoices were variously described as relating to demolition, asbestos remediation and other matters. None of the work described in the invoices was done by Fabca. It would appear that none of the 24 million dollars was ultimately paid to Fabca. Fabca did not subcontract any of the work to anyone. Invoices, and in some cases money, flowed between Caspian and Fabca and 4816774 Manitoba Ltd. operating as Mountain Construction ("Mountain"), Caspian and Fabca and JAGS Development Ltd., Caspian and Fabca and JAW Enterprises Inc., and Caspian and Fabca and Logistic Holdings Inc. In this context, it is worth noting that Mountain had no employees, a fact which suggests it could have performed no work on the WPSHQ Project. All of this leads the City to assert that some of the transactions appear to be anything but bona fide.

The Defendants' Motion to Strike the Statement of Claim

[15] A number of defendants, including the earlier-defined Caspian Defendants and Sheegl Defendants, have brought motions seeking to strike the City's claim or portions of that claim on the grounds that the claim as a whole or certain impugned paragraphs:

a) improperly collectivize or lump together the defendants (specifically those paragraphs dealing with fraud, conspiracy, misrepresentation and conversion);

b) fail to allege material facts necessary to support the claims asserted;

c) do not plead with the precision and specificity required by law (in particular, those paragraphs dealing with fraud, conspiracy, misrepresentation and conversion); and

d) generally do not disclose a reasonable cause of action.

[16] In addition to the above, it would appear that the Sheegl Defendants also seek to strike the City's claim on grounds that would seem connected to Rule 25.11(1)(a) and (b) when they argue that the statement of claim should be struck on the basis that it will "prejudice or delay the fair trial of the action" and that the claim is an abuse of process. To the extent that these grounds for striking the City's statement of claim are somewhat distinct and separate from those set out in the previous paragraph, I will briefly address them as such in the reasons below.

[17] For the reasons that follow, I have determined that there is no basis for this Court to strike any part of the City's statement of claim in respect of any of the grounds set forth by any of the defendants.

[18] In both the motions brought by the Caspian Defendants and the Sheegl Defendants, they seek to strike most of the paragraphs that constitute the City's statement of claim.

[19] In the case of the Caspian Defendants, the paragraphs they seek to strike can be summarized as follows:

a) Paragraph 74-78, 83(a), 88, 90(a), 91, 93, 96 and 98 which contain the City's allegations as to the nature of the Scheme during the phases of the WPSHQ Project and the fraud and misrepresentation;

b) Paragraph 105, which contains the City's allegations of negligent representation;

c) Paragraphs 99, 100, 83(b) and 90(b) contain the City's allegations of conspiracy;

d) Paragraphs 73, 108 and 114, which contain the City's allegations that the defendants owed the City a duty of good faith and honest contractual performance and that they breached those duties;

e) Paragraphs 108 and 122, which contain the City's allegations that Caspian, Dunmore, A.A.R. and Sheegl breached their fiduciary duties; and

f) Paragraph 115, which contains the City's allegation of breach of trust.

[20] In the case of the Sheegl Defendants, the paragraphs they seek to strike can be summarized as follows:

a) Paragraphs 69-72, which contain the allegations as to Sheegl's various agreements with the City and Sheegl's various contractual and fiduciary duties;

b) Paragraph 84-87, which contain the City's allegations as to Sheegl's involvement in the awarding of the Dunmore Contract and Principal Agreement;

c) Paragraphs 106-107, which contain the City's allegations that the defendants are liable in conversion, and unjust enrichment;

d) Paragraphs 110, 112 and 113, which contain the City's allegations that the consultants are liable in negligence and breach of contract and that Sheegl breached his fiduciary duties and the City's Code of Conduct; and

e) Paragraphs 116 and 117, which contain the City's allegation that it suffered damages in the form of overpayments and incurred significant expenses as a result of the Scheme.

[21] Before proceeding to an analysis respecting the specific paragraphs and allegations in the claim that the defendants seek to strike, I will briefly address some of the applicable legal framework on this or any motion to strike a claim. I will also in passing make reference to what is the unique nature of this claim and how the referenced legal framework need be applied mindful of the special challenges of pleading, amongst other allegations, conspiracy, particularly in the present case, where, at the time of this motion, the otherwise desired and particularized information and specificity is unavailable to the plaintiffs.

Legal Framework

[22] For the purposes of the determinations that I must make on this motion, Rule 25.06(1) and (11) have particular application. Rule 25.06(1) requires that every pleading must "contain a concise statement of the material facts on which the party relies for its

claim, but not the evidence by which those facts are to be proved." Rule 25.06(11) provides that full particulars are required "where a fraud, misrepresentation or a breach of trust is alleged." Yet malice, intent or knowledge may be alleged as a fact without pleading the circumstances from which it is to be inferred.

[23] Along with and in addition to the above (to the extent that the defendants all argue to one degree or another that certain parts of the statement of claim disclose no reasonable cause of action) the defendants rely upon Rule 25.11(1)(d). This Court in turn must be guided by the now well-established and connected test. That test was summarized by this Court in ***Company Ltd. et al. v. The Winning Combination Inc. et al.***, 2016 MBQB 180 (CanLII) ("***Vitacea***") affirmed 2016 MBCA 126 (at para. 23):

> The jurisprudence explaining and identifying the limitations and scope of the test applicable to aspects of Rule 25.11 is well known. Legal direction respecting a motion to strike for failing to disclose a reasonable cause of action has been most recently given in ***Grant v. Winnipeg Regional Health Authority et al.***, 2015 MBCA 44, 319 Man.R. (2d) 67, ***Driskell v. Dangerfield et al.***, 2008 MBCA 60 at paras. 33-34, 228 Man.R. (2d) 116, and ***Basaraba v. Manitoba Court of Queen's Bench***, 2006 MBCA 27 at paras. 25-26, 201 Man.R. (2d) 302. In ***Grant***, the Manitoba Court of Appeal summarized the applicable principles as follows (at paras. 35-37):
>
> > The purpose of Queen's Bench Rule 25.11(d) is to ensure the effectiveness and fairness of the litigation process by the weeding out of hopeless claims or defences, without the necessity and cost of the full civil process (***British Columbia v. Imperial Tobacco Canada Ltd. et al.***, 2011 SCC 42 (CanLII), [2011] 3 S.C.R. 45; 419 N.R. 1; 308 B.C.A.C. 1; 521 W.A.C. 1; 2011 SCC 42, at para. 19). Protracted proceedings are unnecessary if a pleading is substantively inadequate to make out a claim or answer one (***Dawson et al. v. Rexcraft Storage and Warehouse Inc. et al.*** (1998), 1998 CanLII 4831 (ON CA), 111 O.A.C. 201 (C.A.), at paras. 8-10, 12).
> >
> > The remedy of striking out a pleading, however, is to be used sparingly. It is reserved only for the "clearest of cases" (***Ellett and Kyte v. Qualico Securities (Winnipeg) Ltd. et al.*** (1990), 1990 CanLII 11333 (MB CA), 64 Man.R. (2d) 318 (C.A.), at para. 6). A claim or defence, or part thereof, should not be struck out unless the moving party demonstrates that it is "plain and obvious" that the cause of action or defence, as pleaded, is certain to fail

(***Odhavji Estate et al. v. Woodhouse et al.***, 2003 SCC 69 (CanLII), [2003] 3 S.C.R. 263; 312 N.R. 305; 180 O.A.C. 201; 2003 SCC 69, at para. 15).

On a motion to strike, the claim or defence should be read generously notwithstanding any imprecision in the language used in it. Factors such as the novelty of a claim or defence, the length or complexity of the issues raised by it, or the likelihood that the opposing party has a strong position that will likely defeat the claim or defence are not reasons alone to strike out the pleading (***Hunt*** [1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959], at p. 980). If a claim or defence has a reasonable prospect of success, it should not be struck out (***Imperial Tobacco Canada Ltd.***, at para. 17; ***Driskell v. Dangerfield et al.*** (2008), 2008 MBCA 60 (CanLII), 228 Man.R. (2d) 116; 427 W.A.C. 116; 2008 MBCA 60, at paras. 11-13).

[24] The test was also further explained by Edmond J. in ***Rebillard v. Manitoba (A.G.) et al.***, 2014 MBQB 181 (CanLII) ("***Rebillard***") citing the Supreme Court of Canada judgment in ***R. v. Imperial Tobacco Canada Ltd.***, 2011 SCC 42 (at para. 15):

The test applied to determine whether a statement of claim should be struck out for not disclosing a reasonable cause of action is set forth in ***R. v. Imperial Tobacco Canada Ltd.***, 2011 SCC 42, [2011] 3 S.C.R. 45:

[17] The parties agree on the test applicable on a motion to strike for not disclosing a reasonable cause of action under r. 19(24)(a) of the B.C. *Supreme Court Rules*. This Court has reiterated the test on many occasions. A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action: ***Odhavji Estate v. Woodhouse***, 2003 SCC 69, [2003] 3 S.C.R. 263, at para. 15; ***Hunt v. Carey Canada Inc.***, 1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959, at p. 980. Another way of putting the test is that the claim has no reasonable prospect of success. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial: see, generally, ***Syl Apps Secure Treatment Centre v. B.D.***, 2007 SCC 38, [2007] 3 S.C.R. 83; ***Odhavji Estate***; ***Hunt***; ***Attorney General of Canada v. Inuit Tapirisat of Canada***, 1980 CanLII 21 (SCC), [1980] 2 S.C.R. 735.

. . . . .

[19] The power to strike out claims that have no reasonable prospect of success is a valuable housekeeping measure essential to effective and fair litigation. It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go on to trial.

[20] This promotes two goods — efficiency in the conduct of the litigation and correct results. Striking out claims that have no reasonable prospect of success promotes litigation efficiency, reducing time and cost. The litigants

> can focus on serious claims, without devoting days and sometimes weeks of evidence and argument to claims that are in any event hopeless. The same applies to judges and juries, whose attention is focused where it should be — on claims that have a reasonable chance of success. The efficiency gained by weeding out unmeritorious claims in turn contributes to better justice. The more the evidence and arguments are trained on the real issues, the more likely it is that the trial process will successfully come to grips with the parties' respective positions on those issues and the merits of the case.
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> . . . . .
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> [22] A motion to strike for failure to disclose a reasonable cause of action proceeds on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven: ***Operation Dismantle Inc. v. The Queen***, 1985 CanLII 74 (SCC), [1985] 1 S.C.R. 441, at p. 455. No evidence is admissible on such a motion: r. 19(27) of the *Supreme Court Rules* (now r. 9-5(2) of the *Supreme Court Civil Rules*). It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The claimant may not be in a position to prove the facts pleaded at the time of the motion. It may only hope to be able to prove them. But plead them it must. The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted.

[25] To the extent that the Sheegl Defendants rely more distinctly upon Rule 25.11(a) to (d) to make certain arguments with respect to their motion to strike, I will set out the remaining portions of the legal framework of Rule 25.11 later in this judgment when I address those distinct submissions made by those Sheegl Defendants.

[26] In the present case, the City's statement of claim, while subject to the same legal principles applicable in any action, need be read and understood mindful of the particular nature of some of the allegations that are contained in the claim. In that regard, it must be remembered that it is in the nature of fraud and conspiracy, that it is extremely difficult for a party/victim to know the full particulars of what may be the alleged perpetrators' originally secret scheme. Such a "scheme" could include details as to who met with whom, and when and what was discussed. This is particularly so at the outset of a legal

proceeding where the party/victim has not yet had the benefit of the discovery process and the production which, by definition, need provide additional information, specificity and particularization to allegations such as fraud and conspiracy.

[27] When considering motions similar to those brought by the defendants in this case, courts have been appreciative of what are the unique challenges that attach to a party/plaintiff when setting out in a claim, allegations such as conspiracy and/or fraud. In ***Multi Formulations Ltd. v. Allmax Nutrition Inc.***, 2009 FC 375 (CanLII) ("***Allmax***"), the Federal Court considered a motion to strike respecting, amongst other things, a claim of conspiracy. In its reasons, it noted the unique challenges involved in such a pleading (at paras 11-12):

> As is often the case in alleging a conspiracy, the particulars of a conspiracy are not broadcast widely and Plaintiffs at the outset of proceedings frequently do not possess the precise details of the alleged conspiracy. As noted by Justice Cumming of the Ontario Superior Court of Justice in *North York Branson Hospital v. Praxair Canada Inc.* (1998), 1998 CanLII 14799 (ON SC), 84 C.P.R. (3d) 12, at par. 22 (Div. Ct.):
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> > In truth, the very nature of a claim of conspiracy is that the tort resists detailed particularization at early stages. The relevant evidence will likely be in the hands and minds of the alleged conspirators. Part of the character of conspiracy is its secrecy and the withholding of information from alleged victims. The existence of an underlined agreement bringing the conspiracy together, proof of which is a requirement born by a Plaintiff often must proven by an indirect or circumstantial evidence. A conspiracy is more likely to be proven by evidence of invert acts and statements by the conspirators from which the prior agreement can be logically inferred. Such details were not usually being available to a Plaintiff until discoveries. These considerations and the general theme of hunt, instructing Courts not to shy away from difficult litigation, also militate against holding pleadings in a civil conspiracy cases to an extraordinary standard.
>
> It is through the prism of these principles that this Pleading must be considered.
>
> [emphasis added]

[28] I do not read the above comments as suggesting that the fact that a party has alleged a conspiracy can by itself immunize a pleading which is otherwise seriously

defective. That said, the complicated and circumstantial nature of the evidentiary or factual foundation of such a tort should nonetheless serve as a reminder to a reviewing court that when dealing with a motion to strike, the sort of objections raised by the defendants in this case should not cause a party like the City to be held, in effect, to an extraordinary standard. In the circumstances of the present case, where the City's pleading cannot be properly characterized as deficient, it is reasonable for the City to request that parts of its claim be scrutinized at this stage mindful of the practical realities discussed in ***Allmax***. Those practical realities and the connected principles attaching to the nature of its claim, provide a "prism" through which many of the defendants' respective arguments on this motion must be assessed.

[29] As I set out earlier, the defendants' grounds for striking the claim involve objections based upon the improper collectivization or lumping together of allegations, the failure to allege material facts, the absence of precision and specificity respecting the allegations and the general contention that the City's claim in respect of some alleged wrongdoing does not disclose a reasonable cause of action. In the paragraphs that follow, mindful of the objections made by the defendants to impugn the various paragraphs and allegations in the City's statement of claim, I propose to address the defendants' arguments generally (with respect to the categories of objection) and with more specific reference to the identified impugned paragraphs.

The Impugned "Collective Pleading" Approach and the Alleged "Lumping Together" of the Allegations made Against the Defendants

[30] A significant part of the argument advanced by the Caspian and Sheegl Defendants with respect to their motions to strike the City's statement of claim, involve their identification of what they characterize as the City's "collective pleading approach". They submit that this approach is improper insofar as it collectivizes or lumps together the defendants and the allegations made against them. This approach, say the defendants, deprives them of the opportunity of knowing the case the City is bringing against each of them individually based on material facts which, if properly presented, would better expose the wrongdoing of each and every defendant.

[31] I have examined carefully the City's pleadings with respect to this category of objection advanced by the defendants. In the circumstances of this case and this particular statement of claim, it is not reasonable to suggest that the City is in fact utilizing what the defendants would argue is an unfair "collective pleading approach". Neither is it accurate for the defendants to suggest that the material facts have been laid out "indiscriminately" vis-à-vis all defendants. Indeed, a closer examination of the claim reveals that the material facts of each defendants' wrongdoings are set out in paragraphs 76, 83, 90, 91, 93 and 96 in a manner so as to disclose to each defendant what it is that the City alleges they have done. Specifically, the "when, how and to whom" aspects of the defendants' alleged acts have all been set out. In each of those paragraphs that I have identified, I see facts that provide information about the contractors', the consultants', the contractor principals' and the consultant principals' (all terms and designations which are clearly defined in the City's claim) involvement. That information

touches upon acts that the defendants are alleged to have committed in furtherance of the Scheme. Included in the material facts is a discernible timeline with respect to the acts.

[32] To the extent that some of the defendants rely on the recent decision of Master Clearwater in ***Dowd et al. v. Skip the Dishes Restaurant Services Inc. et al.***, 2019 MBQB 63 (CanLII) ("***Dowd***") they are suggesting that the present case is analogous to what Master Clearwater found was the justifiably impugned manner in which the plaintiff had "chosen to lump all the defendants together with very little clarification of which defendant is alleged to have done what" (at para. 66). The defendants' reliance upon ***Dowd*** in the present case, however, is misplaced in that the deficiency identified in ***Dowd*** cannot be similarly discerned in the City's statement of claim. The City's statement of claim, while grouping more than 25 defendants into categories, nonetheless identifies what each defendant is alleged to have done. I agree with the City's characterization of its claim when it asserts, for example, that there is a clear contention that the contractors and the contractor principals are alleged to have fraudulently altered or created fraudulent invoices, quotes and change orders while the consultants and the consultant principals are alleged to have knowingly approved these fraudulently-altered or fraudulently-created documents. The City is correct to suggest that its approach recognizes and distinguishes the different roles that the various defendants had in perpetrating the Scheme.

[33] Despite the City's rejection of the defendants' contention that its claim "indiscriminately" collectivizes or lumps together the defendants and the allegations, the

City does point to what I think is an obvious and important fact in respect of its claim and the theory of its case. When one considers the alleged Scheme identified in the statement of claim, it is hard to ignore the fact that the City is alleging that the defendants acted together to perpetrate a fraud on the City. To that extent, as noted in ***Dowd*** at para. 59, "the defendants are all in an identical relationship vis-à-vis the plaintiffs." I agree with the City's submission that, on the facts pleaded by the City, the relationship of the various defendants is more or less the same vis-à-vis the City and, as such, any blanket allegations made against them (the defendants) are in the circumstances of the present case, appropriate. See ***Dowd*** at para. 60.

[34] When I consider the defendants' arguments under this category of objection, I have noted that, pursuant to the City's theory, the Caspian Defendants, for example, are alleged to have acted, for all intents and purposes, as a single entity in altering invoices and quotes, creating false invoices and quotes and submitting them to the City as legitimate. In the context of that allegation, the City contends, in the present case, that the corporate veil ought to be pierced. While the City acknowledges that as a general rule, a corporation is a distinct legal entity, they accurately note that courts have recognized that the separate identities (either of the parent company or its subsidiary or of a corporation and its officers, directors or shareholders) can be disregarded in some circumstances. The circumstances in which the piercing of the corporate veil may take place was discussed in the Ontario Court of Appeal decision of ***Yaiguaje v. Chevron Corporation***, 2018 ONCA 472 (CanLII) ("***Chevron***") where the Court confirmed the

applicable test. It was noted in ***Chevron*** at paras. 36 and 66 that a party must establish that:

a) there is a complete domination of the corporation such that it does not function independently or it is a mere puppet of either the parent company or the individual (as the case may be); and

b) the corporation was incorporated for a fraudulent or improper purpose or used as a shell for fraudulent or improper conduct.

[35] In respect of the above factors, the City has alleged in para. 78 of its statement of claim that the contractor principals controlled and were the directing minds of the contractors, and the consultant principals controlled and were the directing minds of the consultants, and that the contractors and consultants were used to perpetrate the fraudulent Scheme. Given the theory of the City and the manner in which the City seemingly intends to prosecute its claim, it is not unreasonable for the City to suggest that insofar as there is any so-called lumping together of the defendants, it is because the City is alleging that they are in an identical relationship vis-à-vis the City. Given the facts pleaded by the City respecting how the Scheme was perpetrated, any blanket allegations made against the defendants are similarly not unreasonable.

[36] The jurisprudence would seem to suggest that there are cases and circumstances where the lumping together of defendants does not represent a deficiency and indeed, such a manner of pleading may even be appropriate. See ***Europro (Kitchener) Limited Partnership v. Dream Office Real Estate Investment Trust***, 2018 ONSC 7040 (CanLII) ("***Europro***") at para. 32. Such an approach seems particularly viable and

appropriate where, as in the present case, the City's theory asserts that the contractors and the contractor principals similarly misrepresented the fraudulent or inflated quotes, invoices and change orders to the City as true and accurate. In such circumstances "it is not improper to place them together in the same paragraph" (at para. 35).

[37] In acknowledging that it is appropriate in some instances to include the defendants together in the same paragraph or paragraphs, I note that the Court's analysis in ***Europro*** seems to suggest that rather than asking whether the plaintiff has improperly lumped two defendants together, it might be "more helpful to focus on each of the causes of action asserted against [the defendants] to determine whether the claim as pleaded discloses the cause of action that are asserted against [them]" (at para. 36). See also ***Lysko v. Braley***, 2006 CanLII 11846 (ON CA) ("***Lysko***"). In the end, the Court in ***Europro*** declined to strike the statement of claim on the basis the defendants were being lumped together. In citing the Court of Appeal's decision in ***Lysko***, the Court in ***Europro*** noted as follows (at para. 35):

> Similarly, in *Lysko v. Bradley*, 2006 CanLII 11846 (ON CA), [2006] O.J. No. 1137 (C.A.), at paras. 32 to 34, in the context of a claim for negligent misrepresentation, the Court of Appeal cautioned against an overly technical approach to the issue of whether defendants were improperly "lumped together":
>
> . . . .
>
> 34 The motions judge erred in principle in applying a highly technical approach to this part of the pleading, especially to the use of the word "included". First, if there were other members of the Search Committee, they are not alleged to have been at the meeting. The appellant has identified the members of the Search Committee at the October 17, 2000, meeting and they are the only individuals sued for negligent misrepresentation. Second, in my view, the pleading is reasonably open to the interpretation that by using the word "included" the appellant was in fact describing the entire membership of the Search Committee. Finally, if there is a defect, the remedy is not to strike out the plea but merely to require an amendment or the delivery of particulars,

> provided the pleading otherwise discloses a reasonable cause of action. That was the remedy adopted by Greer J. in *Lana International, supra.*
>
> [emphasis added]

[38] I am of the view that in paragraphs 76, 83, 90, 91 and 96, the contractors, the consultants, the contractor principals and the consultant principals have been informed of the overt acts that they themselves are alleged to have committed in furtherance of the Scheme and that such information (along with the timelines for the alleged acts) included how the acts were done and to whom. I am also of the view that, given the nature of the City's claim and the fact that the defendants are all more or less in an identical relationship vis-à-vis the City, to the extent that the City has in any way lumped together the defendants in its statement of claim, it was not improper or inappropriate to do so.

The Alleged Lack of Specificity as it Relates to the City's Allegations Respecting Fraud and Fraudulent and Negligent Misrepresentation

[39] The impugned paragraphs with respect to the above objections include paragraphs 74-78, 83(a), 88, 90(a), 93, 96, 98 and 105. In respect of those paragraphs, the defendants submit that the City's allegations regarding fraud and misrepresentation lack the specificity that is required by Rule 25.06(11). I disagree.

[40] When I examine paragraphs 76, 83, 90, 91, 93 and 96, I conclude that there is sufficient specificity in the City's pleadings in respect to the above allegations and that the material facts of each of the defendants' wrongdoings are adequately set out. I have come to that determination based on my conclusion that each defendant is capable of ascertaining the who, where, when, what and how of the misconduct alleged against it.

[41] I am in complete agreement with the City when it argues that it is untenable for the defendants to suggest that in the present case, it is necessary for the City to separately plead the material facts of each defendant, specifying the who, where, when, what and how of each alleged misconduct. There are more than 25 defendants that the City alleges are implicated in the alleged Scheme. As the City has maintained, the Scheme itself was perpetrated over the span of the WPSHQ Project and would have involved hundreds, if not thousands, of altered or fraudulent invoices, quotes and other documents, in addition to the payment of the alleged Kickbacks (according to the theory of the City) and amounts fraudulently approved by the Consultants. As it relates to the misrepresentations, the City submits that its claim is unique in that there were no particular words spoken which form the fraudulent misrepresentation. Instead, the misrepresentations are within the various fraudulently-altered or fraudulently-created invoices, quotes, change orders and other documents submitted to the City by the Caspian Defendants. In this context, and in the face of the defendants' accusations of insufficient specificity, the City poses a number of salient and compelling questions: Does the Caspian Defendants' insistence on "utmost particularity" require the City to plead each and every invoice, quote, change order and other document the Caspian Defendants and their alleged co-conspirators submitted to the City throughout the course of the WPSHQ Project? The City also asks, "What end would that serve?" If such was done, would the defendants be in any better position to prepare their defences than they are currently? I am in agreement with the City when it suggests that the obvious answer to these questions is no.

[42] There is nothing in the City's claim or the manner in which it has pled the fraud and fraudulent and negligent misrepresentation allegations that would cause me to conclude that there are deficiencies such so as to constitute a violation of any relevant Queen's Bench Rule based on an absence of specificity and particularization. As a practical matter, I am mindful of the fact that, at the time of this motion, the City had not yet obtained the additional information that it believes is contained in the records and documents which it sought pursuant to its Rule 30.10 motion for non-party production. The absence of the potentially more-specific information coming from that production does not however render the current statement of claim deficient. Indeed, even if the City had the type of even-more-specific information (at the time of the drafting of its claim) that the defendants seem to insist be included in the claim, that level of specificity is not required and may not necessarily be appropriate in a pleading where, pursuant to Rule 25.06(1), the pleading is intended to be a concise statement of the material facts. The City reminds the Court that the pleading is not meant to nor should it be a presentation of the evidence by which those facts are to be proved.

[43] Care must be taken to not conflate the appropriate requirement for sufficient specificity as it flows from either Rule 25.06(1) and/or 25.06(11) with a non-existent obligation to plead "evidence" with the clarity and persuasiveness that would satisfy a court, let alone a defendant, about the strength or persuasiveness of a claim. Not only would such a pleading be inappropriate, it is also an obvious misconception of what a pleading can and should do. As stated in ***Europro***, it may be that ultimately some or all of the defendants will succeed on the basis of their position that they did not make the

misrepresentations that are alleged. However, any such eventual or potential determination has nothing to do with the specificity of the City's statement of claim.

[44] In ***Jevco Insurance Company v. Pacific Assessment Centre Inc.***, 2014 ONSC 2244 (CanLII), affirmed 2015 ONSC 7751 ("***Jevco***"), the Ontario Superior Court Justice considered a motion to strike the plaintiff's claim in fraud, negligence, unjust enrichment, conspiracy and negligent and fraudulent misrepresentation on the basis that those claims lacked the full particulars required by Rule 25.08 of the Ontario Rules of Civil Procedure (a Rule identical to QB Rule 25.06(11)). In examining the pleadings setting out a claim similar to the claim in the present case, the Court found as follows (at paras. 47 -48):

> With respect, there is no substance to the Defendants' submission. The allegedly false documents are identified; indeed they are listed and attributed to particular Defendants. The nature of the falsity in the documents is described. Jevco's reliance and conduct in paying the false claims is described. Its loss for paying falsified claims and for paying more to insureds is described. The deceit and the resulting loss is described.
>
> There is nothing subtle about the allegations being made against the Defendants. The Defendants know the case being made against them and what their alleged wrongdoing is. There is no reason to strike out the deceit and misrepresentation claims.
>
> [emphasis added]

[45] In ***Europro*** – in the context of a claim of negligent and intentional misrepresentation – Favreau J. addressed arguments raised by the defendant Dream REIT in which it was asserted that there was a lack of particularization and specificity in the claim owing to the lumping together of REIT with other defendants. The Court stated the following (at paras. 42-43 and 45):

> In this case, Dream REIT's counsel does not dispute that claims of negligent and intentional misrepresentation have been sufficiently pleaded again[st] the other Dream defendants. Indeed, as indicated above, they have defended the

> claim. Rather, Dream REIT argues that the pleading of misrepresentation directed at Dream REIT does not identify the specific misrepresentations made by Dream REIT, or when, where, how and to whom Dream REIT made the representations.
>
> As reviewed above, the Court of Appeal has rejected an overly technical approach to the assessment of whether a claim for misrepresentation has been sufficiently pleaded. Depending on the specific allegations of misrepresentation, it is not necessary in all cases to parse out each defendant; in some cases, it may be appropriate to plead that a group of defendants made misrepresentations together.
>
> . . . .
>
> As in *Jevco*, it is plausible that the misrepresentations were made by each or on behalf of each of the Dream defendants, and the pleadings stage is not the time to decide that Europro cannot advance such a claim.
>
> [emphasis added]

[46] As in ***Europro***, the City argues that the present case is not one where it is necessary to parse out the misrepresentation or overt act of each defendant. In that regard, I accept the City's position that this is indeed a case where a group of defendants are alleged to have made the misrepresentations together in the form of false invoices submitted to the City. Accordingly, the City's manner of pleading is appropriate and not deficient.

[47] Accepting as I have, based upon the jurisprudence, that the City at this stage is not obligated to identify and particularize each misrepresentation and parse out each defendant, but can in fact, plead that a group of defendants made misrepresentations together, I cannot help but interpret some of the defendants' objections as being as much about the strength of the City's case or theory as it is about the way the City has pleaded it. Insofar as the defendants' arguments with respect to a lack of sufficient particularization and specificity disguise a more foundational complaint on their part about what they insist is the City's unpersuasive theory respecting the misrepresentations, I am

of the same view as Favreau J. in ***Europro***, that the "pleadings stage is not the time to decide" that the City cannot advance the claim and the allegations it has (at para. 45).

[48] To the extent that this portion of the City's claim has also raised objections based on doubts as to whether there exists the requisite duty of care based on a special relationship, the City responds by contending that the special relationship between the parties in this case emanates from the fact (as pled) that the contractors, contractor principals, the consultants and the consultant principals were all performing work on the project either pursuant to a contract with the City or as an agent or subcontractor of a direct contractor. The City argues that the fact that those defendants were performing work on the project made it reasonable for the City to rely on those defendants to perform their work honestly, diligently and in good faith. For the purposes of this motion and any objections with respect to lack of specificity, it is at least arguable that that basic information included in the claim by the City is sufficient to constitute the basis of a special relationship between the City and these defendants.

[49] For the reasons I've given, there is no reasonable basis for striking the City's allegations relating to fraud and misrepresentation on the basis of a lack of specificity.

The Alleged Deficiencies as it Relates to the City's Allegations Respecting Conspiracy

[50] The impugned paragraphs of the statement of claim with respect to the above objection include paragraphs 83(b), 90(b), 99 and 100.

[51] It is the position of the defendants that the City's claim respecting conspiracy is deficient insofar as it fails to plead the objects and means of the conspiracy, the overt

acts alleged to have been done by the conspirators and the injury and damages to the plaintiff.

[52] The defendants also assert the conspiracy allegations are deficient as pled because of the application of the doctrine of merger.

[53] Finally, the defendants submit that the conspiracy allegation is deficient as the City has not pled special damages.

[54] I will address each of these purported deficiencies.

[55] I have considered carefully the objection raised by the defendants respecting an excessive vagueness and insufficient particularization respecting the City's allegations of conspiracy as pled in the statement of claim. I am not, however, in agreement with the defendants' argument. Instead, I have found that those things that need be contained in the City's claim, are in fact found in the claim. I note in particular, that the object and means of the conspiracy, and the overt acts of the conspirators, can be found in paragraphs 74 and 76. As the City has contended, in paragraphs 79-97, they have further detailed the conspiracy in respect to each of the different phases of the project.

[56] In coming to the determinations I note in the previous paragraph, I also reject the defendants' argument that to the extent that the City has in any way lumped the defendants together, the City has failed to particularize the claim against each defendant. In the face of a similar argument, the Court in ***Dale v. The Toronto Real Estate Board***, 2012 ONSC 512 (CanLII) ("***Dale***")(leave to the Court of Appeal was denied), dismissed the defendants' arguments that the plaintiff's claim was rife with vague assertions and bald, unsupported legal conclusions against each of the defendants who are alleged to

have engaged in conspiracy. The defendants contended that the vague assertions in the claim were insufficient to ground the cause of action and that "insufficient particulars of their conduct [had] been pleaded" (at para. 53). See also para. 33. At para. 55, the Court stated the following:

> In any event, in my view the plaintiffs' pleading adequately outlines the conspiracy alleged against the defendants. The pleading describes the parties and their relationships with each other. The pleading also alleges the unlawful agreement between the parties, outlines the purposes and goals of the conspiracy, and asserts the resulting special damages (i.e. substantial economic damages) that were occasioned to the plaintiffs. While the impugned pleading provides few specific details with respect to the overt acts alleged to have been done by the individual defendants in furtherance of the alleged conspiracy, but rather speaks more collectively about their involvement and participation in the conspiracy, the pleading is legally sufficient, and permits the defendants to respond to the allegation. See: *Normart Management Ltd. v. Westhill Redevelopment Co.*, at p. 104; *728654 Ontario Inc. (c.o.b. Locomotive Tavern) v. Ontario*, 2005 CanLII 36159 (ON CA), [2005] O.J. 4227 (C.A.) at para. 3-5.
>
> [emphasis added]

[57] In rejecting similar arguments touching upon the lumping together of the defendants and the alleged deficient particularization of a conspiracy, the Court in ***Jevco*** stated the following (at paras. 58-59):

> In the case at bar, the allegations of conspiracy are made against various groupings of defendants and there is no pleading of what each individual defendant in each grouping did in particular. However, the particulars of the conspiracy alleged against each group are sufficient to give notice to each individual defendant of what their role was in the conspiracy. They are all in a position to admit or deny their role in the alleged conspiracy.
> The pleadings principle that it is improper to lump the defendants together must be applied in a way that respects the underlying principle that the pleading must disclose to each individual defendant the case being made against them. Thus, in a given case, it may not be inappropriate to group the defendants. In my opinion, in the case at bar, the approach of Jevco of grouping the Defendants while not eloquent was adequate.
>
> [emphasis added]

[58] In returning to the earlier-mentioned practical reality and challenges that accompany a pleading involving conspiracy, the City is correct to note that in the judgments in ***Dale*** and ***Jevco***, both suggest an appreciation for the unique position in which victims of fraud or conspiracy find themselves. That unique position provides a prism through which a court can consider a motion to strike such as the one brought by the defendants in the present case. That approach was recently confirmed in ***Prokuron Sourcing Solutions Inc. v. Sobeys Inc. and Lexmark Canada Inc.***, 2019 ONSC 7403 (CanLII) ("***Prokuron***"). The Court in ***Prokuron*** determined that the plaintiff's claim in conspiracy did include all material facts needed for the claim to stand and it went on to note "[i]t is unlikely that the victim of alleged conspiracy would ever know at the pleading stage the date on which the conspiracy was formed or the specific terms of conspiracy. These issues are for discovery, not the statement of claim" (at para. 30). A similar point was underscored in ***North York Branson Hospital v. Praxair Canada Inc.***, 1998 CanLII 14799 (ON SC), where the Court stated at para. 22 that "the very nature of the claim of conspiracy is that the tort resists particularisation at early stages." Also noted was that "[p]art of the character of a conspiracy is its secrecy and the withholding of information from alleged victims."

[59] Another argument respecting the deficiency of the City's conspiracy claim involved the defendants' invocation of the doctrine of merger.

[60] The doctrine of merger applies where there is a conspiracy to commit a tort and the tort is actually committed. The theory behind merger suggests that, once the planned

tort is actually committed, the harm flows from the tort and the pleading of conspiracy is, as a consequence, redundant.

[61] The defendants contend that the doctrine of merger should now apply to the City's claim for conspiracy to commit fraud and the tort of fraud and, as a result, seek to have the conspiracy claim struck. I am not persuaded. In my view, the defendants' arguments in this regard are misplaced in that any application of the doctrine of merger at this stage would be premature.

[62] Strong support exists for the City's position that the Court should not determine whether the doctrine of merger applies to the City's claim until trial, at which point the trier of fact is capable of deciding whether anything is added by the City's conspiracy claim. At this point (at the pleading stage), it is simply too early and thus inappropriate to make that determination. In ***Jevco***, Perell J. reviewed some of the Canadian jurisprudence in respect of the doctrine of merger and he concluded that "the merger principle is no bar to pleading both a nominate tort and a conspiracy to commit the tort and then to leave it to the trial judge to determine whether the plaintiff has proved the nominate tort or the conspiracy and then to apply the doctrine of merger" (at para. 71). It was Perell J.'s view that it is only after trial that the trier of fact can make the determination whether or not two causes of action have merged. That approach was confirmed and supported by the Divisional Court of the Superior Court of Justice on appeal in that same proceeding in ***Jevco Insurance Company v. Pacific Assessment Centre Inc.***, 2015 ONSC 7751 (CanLII). At para. 52, the Court stated the following:

> Accordingly, in my view, the law supports permitting the conspiracy claim to be pleaded along with other nominate torts and applying the doctrine of merger only

> at the end of the trial when it is known if the plaintiff has been fully successful on the nominate torts and whether there is anything added by the conspiracy claim. Further, in the interests of paring down out-of-control interlocutory proceedings and introducing consistency in the law, as a practical matter it is preferable not to resolve these types of claims at the pleadings stage.
>
> [emphasis added]

[63] In concluding this discussion respecting why the defendants have not persuaded me that the City's claim in conspiracy should be struck, I will address one final aspect of the defendants' arguments concerning an alleged deficiency.

[64] The defendants had alleged that the conspiracy claim was deficient as the City had failed to allege any special damages in consequence of the conspiracy and further, that the City had failed to particularize those special damages. Again, that argument is not persuasive.

[65] When one examines paragraphs 1(b), 77, 116 and 117, it is reasonable to conclude that the City has indeed pled special damages. As it relates to the alleged failure to particularize, the City is well to rely upon the Court's reasoning in ***Dale*** wherein it is underscored that the tort of conspiracy resists particularization at the early stages of a litigation and that, as a victim of fraud and conspiracy, the City is not unreasonable to suggest that it is not in a position to particularize its special damages beyond what has already been pleaded at this stage. In fact, Rule 25.06(13) contemplates that a plaintiff is only required to plead the amounts and particulars of special damages "to the extent that they are known at the date of the pleading."

The Defendants' Contention that the City's Allegations Rooted in Breaches of Contractual Duties, Duties of Honest Contractual Performance and Fiduciary Duties Contain No Reasonable Cause of Action

[66] The paragraphs that give rise to this challenge as raised by the defendants, are paragraphs 73, 108, 114 and 122.

[67] It is the position of the defendants that the allegations contained in these paragraphs contain no reasonable cause of action against the personal defendants since no contract exists between the City and the personal defendants.

[68] Given the theory of the City and the submissions being made on this motion, I am not persuaded the defendants can rely upon the above position to pre-empt the related allegations in the City's claim. For the purposes of this motion to strike, I am persuaded by the City's position, which insists that these allegations do indeed contain a reasonable cause of action against the personal defendants insofar as the City has pleaded that the corporate veil should be pierced such that they would be jointly and severally liable with the corporate defendants for the breaches of contract. Whether the corporate veil is to be pierced will be decided in due course as will any connected determinations respecting liability. At this stage, however, it is not possible to persuasively argue on the basis of the pleadings that this aspect of the City's claim can be definitively seen to disclose no reasonable cause of action.

[69] Similarly, as it relates to the City's allegations rooted in the identified duty of honest contractual performance, it is again the position of the City that the corporate veil should be lifted and it is with that understanding that the allegations of the defendants' personal responsibility and liability for the breach of duty should stand.

[70] In light of the City's position that the corporate veil should be lifted and to the extent that the personal defendants were engaged in work on the WPSHQ Project on behalf of Caspian and other corporate defendants, it is my view that it is not appropriate at this stage, on the basis of the pleadings, to conclude that there is no reasonable cause of action based on the argument that the duty of honest contractual performance did not extend to the defendants and to their agents and employees in the context of the work performed on the project. I note the approach taken by Perell J. in ***GlaxoSmithKline Inc. v. Apotex Inc.***, 2016 ONSC 6768 (CanLII), where, in the context of a motion to strike, the Court was required to consider, amongst other things, whether the duty of good faith and the contractual performance extended to a non-party (the parent corporation of the contracting party). Perell J. refused to strike that part of the plaintiff's claim that alleged such a duty against the parent corporation stating that "[w]here the scope of a legal duty has not been fully settled in the jurisprudence, an allegation that the duty has been breached should not be dismissed on a Rule 21 motion" (at para. 22).

[71] Concerning the Caspian Defendants' argument in relation to paragraphs in the statement of claim dealing with allegations of breach of fiduciary duty, I am again not convinced that any of those paragraphs should be struck. The Caspian Defendants had maintained that those paragraphs should be struck because there is no fiduciary duty pleaded as against Caspian or the personal defendants. I reject the defendants' argument and point, as did the City, to paragraphs 108 and 122. As the City maintains, if those paragraphs are read in their proper context, the allegation of breach of fiduciary duty can be seen as applying only to those against whom a fiduciary duty ought to be pleaded.

[72] In short, the City's claims for breaches of contractual duties, honest contractual performance and fiduciary duties should not be struck.

The Distinct Argument Raised by the Sheegl Defendants Pursuant to Rule 25.11(1)(a) to (d)

[73] Separate and in addition to the already-discussed arguments raised by the defendants in support of their motion to strike the City's statement of claim, the Sheegl Defendants urge the Court to strike the claim as it prejudices and delays the fair trial of the action, it is scandalous, frivolous, vexatious and/or it gives rise to an abuse of process. While it cannot be said that the Sheegl Defendants' arguments in that connection were fully developed in their submissions to the Court, the legal reference point or framework for these arguments is found in Rule 25.11(1)(a) through to (d).

[74] Rule 25.11(1) provides the Court with the authority to strike out a pleading or part of a pleading where it:

a) may prejudice or delay the fair trial of the action;

b) is scandalous, frivolous or vexatious;

c) is an abuse of the process of the court; or

d) does not disclose a reasonable cause of action or defence.

[75] As I will explain, there is simply no evidence or justification that would support striking the City's pleading (or part of the City's pleading) based on Rule 25.11(1) (a) through (d).

[76] In ***Dowd*** at para. 38, Master Clearwater confirmed that motions such as this one would not normally include the filing of affidavit evidence, except (as here) where the motion to strike is in part based on Rule 25.11(1) (a) through (c).

[77] In the present case, the Sheegl Defendants have provided no basis to substantiate their position that the City's claim (or parts of it) against the Sheegl Defendants would cause prejudice or delay of the fair trial of the action.

[78] As will be noted later in this judgment, I have granted Mr. Phil Sheegl's motion to sever the claim against him. While I acknowledge that the City's case and its discovery of potentially new information will undoubtedly be affected by both my recent order for the production from a non-party (the RCMP) and by the ordinary discovery process (which may cause the City to revisit my severance order), there is currently a justification for separating Mr. Sheegl and his trial from the action the City has brought against all other defendants. That said, and I repeat, there is no evidence before this Court to support the Sheegl Defendants' contention that the City's claim will prejudice or otherwise delay the fair trial of the issues raised in its statement of claim.

[79] As it relates to the Sheegl Defendants' submission that the City's claim (or parts of it) may be scandalous, frivolous and/or vexatious, I note the judgment in ***Nygård International Partnership v. Canada Broadcasting Corp.***, 2011 MBQB 124 (CanLII) ("***Nygård***"), affirmed 2012 MBCA 8 (CanLII). It was confirmed in that case that the burden on the moving party seeking to strike a claim as scandalous, frivolous and vexatious is a very high one. The party must show that "the pleadings are made without any probable justification at law, *mala fide* with a clear intent to annoy or embarrass the

opposing party" (at para. 12). As noted in ***Vitacea*** at para. 83, "[a]ffidavit evidence may be considered to determine whether a pleading is frivolous, vexatious or an abuse of process."

[80] The Sheegl Defendants have failed to produce any evidence to support their motion to strike the claim as frivolous or vexatious. Moreover, there is nothing on the face of the City's pleadings to indicate that the claim was initiated for any reason other than to assert the City's legitimate right to recover from those (including the Sheegl Defendants) the City believes perpetrated fraud and bribery against it, causing it to suffer loss and damage. Indeed, when I examine the evidence adduced by the City, that evidence demonstrates at this stage, that there is, at the very least, a basis for its claims of a fraudulent invoicing Scheme which potentially involved bribes, possible Kickbacks and a conflict of interest. In that regard, I note that the City has produced copies of invoices and quotes that were literally marked as "inflated". It may be argued as well that there was also some evidence adduced that may be interpreted as representing attempts by the Caspian Defendants to destroy evidence by arson. The City's evidence may also be interpreted as an evidentiary basis for a Scheme whereby the defendant Babakhanians and the defendant Anderson directed a subcontractor (Fabca) to create invoices that did not reflect the work being performed by that subcontractor and whose invoices would then be paid by the Caspian Defendants to Fabca and then repaid by Fabca to the Caspian Defendants or their related corporations. There is also evidence before the Court tendered by the City which provides a basis for some of the allegations made in the claim against the Sheegl Defendants. In that connection, I note that in the

affidavits of Michael Jack (which were not struck) it is alleged that Mr. Sheegl provided confidential information to Mr. Babakhanians respecting the WPSHQ Project. It is alleged that Mr. Sheegl told Mr. Babakhanians that "I will do everything I can to [sic] to help us all succeed here." His comment was allegedly made shortly before the awarding of the Guaranteed Maximum Price ("GMP") Contract to the City. Prior to that comment, Mr. Babakhanians is said to have stated to Mr. Sheegl, "We really want this project [the WPSHQ Project]." As part of the City's evidence against Mr. Sheegl and the Sheegl Defendants, I also note that around the same time, Mr. Sheegl was delegated authority to award the GMP contract and then awarded that contract to Caspian, after which Caspian issued a cheque to Mountain for $200,000 and Mountain (of which Babakhanians is the controlling mind) then issued a cheque to Mr. Sheegl's corporation, FSS, for "consulting fees". This in addition to some evidence with respect to a land deal in Arizona as between Mr. Sheegl and Mr. Babakhanians, all of which according to the City's theory, constitutes a clear violation of the City's Code of Conduct by which Mr. Sheegl was bound and which, as an officer of the City, gave rise to certain fiduciary obligations.

[81] While the evidence which I reference above, and the City's interpretation of it, will undoubtedly be challenged at trial by all of the defendants, including Mr. Sheegl and the Sheegl Defendants, that evidence does constitute the basis of a legitimate and bona fide action brought by the City. Conversely, there is nothing in the evidence that would suggest anything frivolous or vexatious about the City's claim against the Sheegl Defendants.

[82] As it relates to the Sheegl Defendants' arguments that the City's claim against them is an abuse of process, I am similarly unpersuaded.

[83] In ***Vitacea***, this Court relied on the comments of Cameron J. (as she then was) in ***Nygård*** to summarize the law and abuse of process. In ***Vitacea*** at para. 87, I noted as follows:

> I am similarly unconvinced that the inclusion of Bukhari in Vitacea's claim is an abuse of process. An abuse of process may arise when a legal process is used for an ulterior motive, other than that for which it was intended. When properly invoked, an allegation of abuse of process is meant to provide protection against harassment or the perversion of the legal process for the purposes of accomplishing an improper result. See ***Re Moss*** (1999), 1999 CanLII 14182 (MB QB), 137 Man.R. (2d) 199 at para. 35 (C.A.). An abuse of process may be established where the proceedings are oppressive and vexatious and/or they violate the fundamental principles of justice underlying the community's sense of fair play and decency. See ***Nygard*** at paras. 14-16. A claim found to be frivolous and vexatious and/or embarrassing may nonetheless also constitute an abuse of process. A particular or unique emphasis and focus of an abuse of process claim is on the court's integrity and its interest in maintaining confidence in the administration of justice.
>
> [emphasis added]

[84] Again, the Sheegl Defendants provided no evidence that would support their assertion of an abuse of process. Even in the absence of any evidence from those defendants, the City is able to point to some of the evidence that is currently before the Court and which clearly suggests that the City's claim is neither oppressive nor unfair. The City points to evidence which includes at this early stage, the following:

a) Sheegl, as an officer of the City, owed a fiduciary duty to the City (as conceded by him at para. 64 of Sheegl's brief);

b) Sheegl told Babakhanians that he (Sheegl) would do everything he could for him in response to Babakhanians' stating that he wanted the WPSHQ Project;

c) Shortly thereafter, Sheegl is alleged to have used his authority as an officer of the City to ensure the award of the GMP Contract to Caspian (of which Babakhanians was an officer, director and principal); and

d) Shortly after arranging this contract, Sheegl received $200,000 and $68,500 from Babakhanians, Caspian and/or Mountain.

[85] To repeat, although the above evidence does not constitute evidence about which ultimate findings should at this stage be made, it is nonetheless evidence that suggests Sheegl breached his fiduciary duties, breached the City's Code of Conduct, that he may have received a bribe and he may have conspired with Babakhanians and Caspian to have the City enter into the GMP contract with Caspian in exchange for what the City alleges were secret commissions and personal benefits. On the basis of the evidence which provides the City some basis to make those arguments, this is not a case where the Sheegl Defendants can successfully argue an abuse of process.

[86] As it relates to the Sheegl Defendants' arguments that the City's claim or parts of that claim fail to disclose a reasonable cause of action against them, I will be brief. I have already, earlier in this judgment, made certain determinations which reject some of what the Sheegl Defendants argue with respect to this part of their submission. It will suffice to note at this stage, that based upon the governing test, there is nothing in the Sheegl Defendants' submission that would justify the determination that the City's claim or any part of it discloses no reasonable cause of action.

[87] The legal test for determining whether a statement of claim should be struck out for not disclosing a reasonable cause of action and the rigours attached to that test have

been discussed in a number of Manitoba cases. It is well-established that a claim will only be struck where it is plain and obvious – assuming the facts to be true – that the pleading discloses no reasonable cause of action. Any such determination requires the Court to conclude that the claim has no reasonable prospect of success. Where a reasonable prospect of success does exist, the matter should be allowed to proceed to trial. See ***Rebillard***. The remedy of striking out a pleading for disclosing no reasonable cause of action has been identified as a remedy that should be used "sparingly" as it is reserved for only the "clearest of cases", ***Grant v. Winnipeg Regional Health Authority et al.***, 2015 MBCA 44 (CanLII) ("***Grant***") at para. 36. It has also been accepted that the claim "should be read generously notwithstanding any imprecision in the language" (at para. 37). Further, factors like the novelty of the claim or the length and complexity of the issues are not reasons to strike out a pleading. See ***Grant*** at para. 37.

[88] Assuming the facts which have been pled are true, the Sheegl Defendants have not established that it is plain or obvious that the City's claim or parts of it have no reasonable prospect of success. When I examine their position in this regard, I cannot help but note that it would seem that much of Sheegl's and the Sheegl Defendants' argument respecting "no reasonable cause of action" is based upon the already-rejected argument that the Sheegl Defendants are lumped in with the other defendants. I have already rejected that argument as it relates to these and all other defendants who raised it. Moreover, I have examined what it is that the City is advancing as its action against the Sheegl Defendants. In doing so, I note that the City has pleaded breach of fiduciary

duty, breach of contract, conspiracy, fraud, deceit, unjust enrichment, conversion and fraudulent and/or negligent misrepresentation. Based on the governing law and assuming as I must that the facts pled are true, that is, that the Sheegl Defendants accepted a Kickback from the other identified defendants in exchange for an unfair procurement of advantages (for example, the granting of the GMP contract), the above-identified torts have a basis for being set out and potentially made out.

[89] It is not plain and obvious that the City's claim contains no reasonable causes of action such that this is one of those "clearest of cases" which justifies the remedy of striking out the statement of claim or parts of it.

Conclusions Respecting the Defendants' (all defendants) Motion to Strike the Statement of Claim

[90] For the foregoing reasons, I have concluded that the statement of claim discloses various causes of action.

[91] To the extent that the defendants may be "lumped together", it is because they can and perhaps must be so presented, given some of the torts pled, given the City's identified theory as to how they acted together and given that the City alleges the defendants to be in identical positions vis-à-vis the City.

[92] I have also concluded, that all of the defendants can know from the statement of claim those various torts and/or other wrongs they are alleged to have committed.

[93] The defendants' motion to strike the City's claim, or parts of it, is dismissed.

Defendants' Motion for Further and Better Particulars

[94] The defendants have brought a motion for further and better particulars argued in the alternative to their motion to strike the City's statement of claim or parts of that claim.

[95] A motion for further and better particulars need be examined in the context of the particulars already present in the statement of claim and the general adequacy of the pleadings in question. In the present case, I have already determined that while additional clarity, detail and refinement (to aspects of the City's theory) may come with the City's access to further production (pursuant to both the non-party production and the ordinary discovery process itself), that which is already in the pleadings provides the defendants, including the Sheegl Defendants, sufficient information respecting the City's case and theory to which the defendants must respond. As I earlier noted at para. 31 of this judgment, in the context of the defendants' motion to strike, paragraphs 76, 83, 91 and 96 (of the claim) reveal the material facts of each defendant's alleged wrongdoings in a manner so as to disclose what the City alleges they have done. The "when, how and to whom" aspects have all been set out.

[96] I agree with the City that the particulars that are now being requested by the Sheegl Defendants go well beyond the seeking of material facts or requisite information required by law or the rules of pleading. In my view, much of what the Sheegl Defendants now seek is on the order of evidence. In that connection, the City is persuasive to use as an example, paragraph 42 of the Sheegl Defendants' request for particulars wherein they seek "all facts and conduct relied upon in support of the allegation that Sheegl

conspired with his co-defendants...to induce the City to award the Principle Agreement to Caspian". Similarly, the Sheegl Defendants seek the facts or particulars that were relied upon in support of the various other allegations made by the City. In response, the City is well to emphasize the analogy to what is permissible in respect of undertakings. Undertakings which require the disclosure or excavation of the facts upon which a party relies in support of an allegation in its pleadings are not appropriate even on discovery. See ***Can-Air Services Ltd. v. British Aviation Insurance Company Limited***, 1988 ABCA 341 (CanLII) at para. 10. As the City has argued, if the Sheegl Defendants' requests would be inappropriate as requests for discovery, they are not appropriate as requests for particulars as pleadings.

[97] In ***Her Majesty the Queen in Right of the Province of Manitoba v. Rothmans et al.***, 2014 MBQB 160 (CanLII), the Court noted as follows (at para. 65):

> The general rule is that particulars will not be ordered unless a defendant establishes that the particulars are both necessary for pleading and not within its knowledge – unless the pleadings are, on their face, inadequate or in violation of the rules. See ***Nygard International Partnership v. Canadian Broadcasting Corp.***, 2010 MBQB 70 at paras. 20 and 23, 252 Man.R. (2d) 205; and ***Wenzel v. Manitoba Hydro Electric Board*** (1993), 1993 CanLII 14797 (MB QB), 86 Man.R. (2d) 312 (Q.B.). I accept the Province's position that in the present case, the pleadings are neither inadequate nor in violation of the rules. I also accept that where asserted by the Province, the information in the particulars sought is indeed within the knowledge of the defendants. Accordingly, the defendants needed to demonstrate that they are unable to plead. They have not done so.

[98] As I have already noted in this judgment, the City's pleadings are neither inadequate nor in violation of the Rules. Apart from those requests made by the defendants that are improper based on Rule 25.06(11), I am of the view that much of what is requested by the Sheegl Defendants may be within their knowledge and it is, for

the most part, not within the knowledge of the City at this time. Moreover, the defendants have not demonstrated that they are unable to plead.

[99] Based on the foregoing, the defendants' motion for further and better particulars is denied.

The City's Motion to Amend its Statement of Claim

[100] The main thrust of the City's proposed amendments can be summarized as the desire to:

a) add certain proposed defendants as parties to this action; and

b) to more precisely plead that this Court should pierce the corporate veil and not recognize the typical separate legal status of the proposed defendant and other corporate defendants.

[101] Rule 26.01 provides the Court with the discretion to allow a party to amend its pleadings "[o]n motion at any stage of an action...unless prejudice would result that could not be compensated for by costs or an adjournment."

[102] The relevant factors that are to be considered as part of a Rule 26.01 analysis have been identified and discussed in various cases. See ***Ranjoy Sales and Leasing Ltd. et al. v. Deloitte, Haskins & Sells***, 1989 CanLII 7515 (MB QB), affirmed 1990 CanLII 11119 (MB CA); and ***Winnipeg Airports Authority Inc. v. Allianz Global Risks US Insurance Company***, 2016 MBQB 185 (CanLII), affirmed 2017 MBCA 101 (CanLII). See para. 46. The relevant factors to be considered are as follows:

a) The seriousness of the prejudice to the other party;

b) Whether the prejudice that would result could be compensated for by cost or an adjournment;

c) Whether there was a delay on the part of the party moving for the amendments and if so, whether the delay has been satisfactorily explained; and

d) The nature of the proposed amendment and whether it raised a valid, arguable point that has merit.

[103] In examining the relevant factors, I have determined that the City's motion to amend its statement of claim ought to be granted.

[104] In my view, there is no prejudice likely to result to either the proposed defendants or the Sheegl Defendants as a result of the City's amended pleading. Pleadings in this matter are not yet closed. Further, the proposed defendants' principal, Armik Babakhanians, is already a party to and has notice of the nature of the City's claim. For their part, the Sheegl Defendants were already aware of the bribery being alleged against them.

[105] Having concluded that there is no prejudice, for the purposes of the final analysis of the relevant factors, I conclude that there is nothing for which the defendants need compensation.

[106] Concerning whether there was some delay in the City bringing the amendments and, if so, whether the delay has been satisfactorily explained, I have concluded that in the circumstances of this case, there has not been identifiable delay by the City.

[107] As the City has explained, the City filed its original statement of claim on January 6, 2020, and in and around that time, it received certain documents from Fabca which

included invoices from the proposed defendants. The City further explains that additional documents and information were sought from and disclosed by, Fabca to the City. Further investigation was done throughout February, March and April, during which time the City filed two additional affidavits in support of its motion for non-party production. The City also received additional RCMP documents following the RCMP's disclosure of additional production orders and search warrants (filed in the course of Project Dalton). As the City has noted, these additional RCMP documents were included, referred to and analyzed in the two additional affidavits filed by the City in March and April of 2020. Simply put, since the original statement of claim, the City's actions and reactions do not suggest impugnable delay and, to the extent any could be identified, it has been satisfactorily explained.

[108] When I examine the nature of the proposed amendments and whether they raise a valid and reasonable argument, I take note the invoicing Scheme summarized in the affidavit of Michael Jack sworn May 21, 2020, and discussed in further detail in the affidavit of Victor Neufeld, affirmed April 9, 2020. The City is on solid ground when it argues that the summary plainly shows that the proposed amendment raises a valid and arguable point.

[109] To the extent that submissions have been made to the effect that the City's amended claim might raise new causes of action, little time need be spent on this aspect of the defendants' arguments.

[110] In my view, the City pled a number of causes of action in its original pleading, and for the most part, its proposed amendments consist of clarifications and particularizations

of the existing causes of action in addition to what the City describes as "minor housekeeping amendments". The City stipulates that with the exception of the proposed defendants for whom all the causes of action are in a sense new, the only cause of action that could be considered "new" is the tort of bribery at paragraph 113.1. The City concedes that the only other change to the substance of the City's pleading is the further particularization of the basis for piercing the corporate veil at paragraphs 78-78.12. I agree.

[111] Accordingly, insofar as there are any identifiable new causes of action in respect of the proposed defendants which trigger an issue respecting limitation periods, the only applicable limitation periods are those which do not expire until January 2026 (in respect of the allegations against the proposed defendants) and August 2023 (in respect to the bribery allegations).

[112] In the result, the City's motion to amend its statement of claim is granted.

Sheegl Defendants' Motion for Severance

[113] The Sheegl Defendants sought an order to sever the City's claim against them from the remainder of the action on the ground that the causes of action against those other defendants would unduly complicate and delay proceedings such so as to cause prejudice.

[114] Despite the City's initial and more stark opposition to this motion, by the time oral submissions were made, the City's strong opposition to severance had diminished if not dissipated.

[115] Despite the somewhat less strident opposition on the part of the City to severance, it continues to maintain that severance could result in a potentially less proportionate, just and expeditious approach to its action. In that connection, the City reminds this Court of its theory that the Sheegl Defendants are but one part of a fraudulent Scheme in which the City alleges all defendants were involved and participated. The City also reminds the Court that its claim against the Sheegl Defendants is intimately tied to its claim against the other defendants and in particular, to the measure of damages against Sheegl. It is the position of the City that it (the City) is entitled to recover from Sheegl either in the amount of any alleged bribe or Kickback or as compensation for the City's loss and damage associated with the defendants' Scheme, of which Sheegl is an alleged participant. See ***T. Mahesan s/o Thambiah v. The Malaysia Government Officers' Co-operative Housing (Malaysia)***, [1977] UKPC 21 (28 November 1977) at 383. See also ***Attorney-General for Nova Scotia v. Christian et al.***, 1974 CanLII 1320 (NS CA).

[116] To the extent that the City's approach to severance could be seen to have softened from the time the parties addressed the Court on oral submissions, the City's submission involved an acknowledgement that the current realities of its case (pending further production and discovery) despite its overall theory, does place Sheegl in a somewhat distinct position in respect of the law and evidence and the presentation of that evidence at an eventual trial. That said, the City underscored that with the anticipated additional evidence that it may receive based on both the recent Rule 30.10 non-party production order and the ordinary discovery process generally, the evolution of its case may make

the justification for a joint trial involving Sheegl all the more obvious and compelling. It is for that reason, that the City stipulated that if this Court was to grant severance on the basis of the somewhat different factual and legal issues that attach to the case against Sheegl and the potentially different presentation of that evidence at trial, the City may nonetheless still ask this Court to revisit the issue of severance. In other words, new information and new evidence adduced and discovered in the next number of months may in the name of the most proportionate, just and expeditious proceedings require a joint trial involving Sheegl.

[117] The relevant Manitoba case law on the issue of severance was summarized in this Court's decision in ***QSI Interiors Ltd. v. EllisDon Corporation***, 2013 MBQB 278 (CanLII) ("***QSI***") at paras. 20-28. Those factors identified as relevant when determining severance include the following:

a) Applications for severance will be factually-driven and there are no obligatory criteria to which the court must avert;

b) One party ought not to be harassed at the instance of another by an unnecessary series of trials;

c) There must be some reasonable basis for concluding that the trial of the issue or issues sought to be severed would put an end to the action;

d) The fundamental principle to be considered on applications for severance is the just, most expeditious and least expensive means to achieve a determination of a dispute in a civil proceeding;

e) An order for severance should hold the prospect that there will be a significant saving of time and expense;

f) Severance should not give rise to the necessity of duplication in a substantial way in the presentation of the facts and law involved in later questions;

g) Nothing should be done which might confuse rather than help the final solution of the problem;

h) The general rule is that all issues in an action should be tried together; and

i) Severance should only be granted in clear and compelling circumstances and only when it is clearly just and expeditious to do so.

[118] I have considered carefully the above factors in the context of what are still the somewhat distinct legal and factual issues attaching to the City's claim as against Sheegl. While I do not wish to de-emphasize some of the other relevant factors which might in these circumstances, commend a resistance to severance, I am influenced by what has been identified as a fundamental principle to be considered on these applications. In that regard, I am at this stage persuaded that the request for severance is the just, most expeditious and least expensive means to achieve a determination of the issues which constitute the basis of the City's claim against Sheegl.

[119] As part of my consideration of the relevant factors, I have noted the submissions of counsel for Mr. Sheegl and in particular, the following points:

a) It will be argued that Mr. Sheegl's relationship with the City is distinct from that of his co-defendants;

b) Mr. Sheegl would incur considerable expense and delay in having this matter determined, given the inclusion of 39 other defendants within the statement of claim;

c) The claims against Mr. Sheegl's co-defendants may be seen as different (compared to the claim against Mr. Sheegl under the terms of the employment contract with the City) and may result in a more lengthy discovery process and trial;

d) There is a possibility that Mr. Sheegl may not be fully compensated for the costs of a longer and more complex trial; and

e) Severing Sheegl may narrow the factual and legal issues and could, in that sense and in the circumstances of this case, be seen as according with the principle of proportionality.

[120] The above points advanced as part of the submissions made by the Sheegl Defendants, may individually and in isolation be more or less persuasive. They may also become less compelling depending upon additional details, information and evidence that may flow from future production and discovery.

[121] In addition to the above, as part of my consideration of the appropriateness of severance in this case, I note the Sheegl Defendants have stated their unconditional willingness to continue to participate in and attorn to the timelines and rigours of the designated case management regime for this complex proceeding. Such case management is obviously designed to significantly shorten and render more efficient any pre-trial matters that might otherwise delay a complex, multi-party proceeding. See ***QSI***

at para. 34. As a result, some of my concerns for the potential inefficiencies and disproportionate costs and delays that might be caused by a protracted and parallel proceeding, are mitigated by the fact that the Sheegl Defendants will be active participants in the same case management regime as all other defendants. Accordingly, any necessary distinct or similar pre-trial issues or adjudications will be done in lockstep with all other defendants. This ensures not only time and cost savings, it also ensures an easy transition in the event that the City asks this Court to revisit severance with an eventual application for joinder.

[122] For the reasons given and with the above provisos, the Sheegl Defendants' application for severance is granted.

The Sheegl Defendants' Motion to Strike the Cross-claim Brought by the Consultant Defendants

[123] The Sheegl Defendants have brought a motion to strike the cross-claim brought by the Consultant Defendants.

[124] As part of its submission, the Sheegl Defendants argue that the cross-claim is made up of unsubstantiated "cursory paragraphs" in relation to its claim for contribution and indemnification. The Sheegl Defendants insist that insofar as the Consultant Defendants have pled and rely upon *The Tortfeasors and Contributory Negligence Act*, C.C.S.M. c. T90 (the "*Act*"), they are not entitled to claim under the *Act* where no material facts have been properly pled in furtherance of that claim. Indeed, it is the position of the Sheegl Defendants that any claim to an entitlement to contribution and indemnification from the Sheegl Defendants "is incompatible and completely

contradictory to the Consultant Defendants' submission that they have no knowledge of the allegations advanced against the Sheegl Defendants by the plaintiffs [the City]."

[125] I have considered carefully the Sheegl Defendants' arguments. I am, however, not persuaded that the Consultant Defendants' cross-claim should be struck.

[126] In responding to the Sheegl Defendants' motion, the Consultant Defendants are correct to identify that in the end, the essential reason advanced by the Sheegl Defendants for their motion to strike the cross-claim, is an alleged failure by the Consultant Defendants to plead material facts contrary to Rule 25.06(1). That argument is not persuasive.

[127] Rule 25.06(1), need be read together and coherently with other applicable Rules of the Court. In that regard, the Consultant Defendants urge upon the Court the consideration of Rule 25.02 which provides that "[p]leadings shall be divided into paragraphs numbered consecutively, and each allegation shall, so far as is practical, be contained in a separate paragraph" (emphasis added).

[128] As a practical consideration, the Consultant Defendants emphasize that its cross-claim is based on the City's claim. In that sense, the cross-claim is deemed (on an alternative basis and as applicable in the circumstances) to incorporate the material facts that are alleged in the statement of claim. In that regard, the Consultant Defendants remind the Court that the statement of claim is 57 pages long and that it is neither practical nor desirable to cut and paste the entire claim or even substantial portions of that claim for the purposes of pleading in a manner that the Sheegl Defendants would consider as more clearly setting out "material facts".

[129] I am in agreement with the Consultant Defendants that pleading in a manner that would effectively cut and paste the statement of claim is unnecessary. The Sheegl Defendants are in possession of the statement of claim and the allegations are set out in that claim. I have already determined on a previous motion that that statement of claim provides adequate specificity and particularization for the defendants.

[130] Insofar as the Consultant Defendants have pled no knowledge or have denied certain allegations made by the City for which they claim indemnity from the Sheegl Defendants, such a manner of pleading cannot be determinative of the Sheegl Defendants' motion. As the Consultant Defendants have argued, a party can make inconsistent allegations, as long as the pleading makes it clear that they are pleaded in the alternative. See Rule 25.06(6). That is precisely what the Consultant Defendants in the circumstances of this case have set out in their paras. 61 and 62 of the cross-claim.

[131] Although for the reasons already explained above, I am otherwise unpersuaded of the merits of the Sheegl Defendants' motion to strike the cross-claim, I will note as well, the potential prejudice that could attach to the Consultant Defendants in the event that the main action against the Consultant Defendants and the Sheegl Defendants succeeds. Absent some fundamental deficiency in the cross-claim (not present in this case), the Consultant Defendants have a right to seek apportionment and indemnification. There is no obvious prejudice to the Sheegl Defendants arising from the Consultant Defendants' cross-claim whereas there very well may be prejudice if the Consultant Defendants are denied their opportunity to have adjudicated what they say are their legal rights, as asserted in the cross-claim.

[132] For the reasons given, the Sheegl Defendants' motion to strike the cross-claim is dismissed.

Summary of the Determinations of the Motions Decided in this Judgment

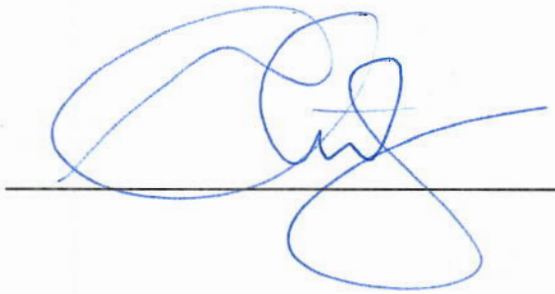
[133] The defendants' motion to strike the City' s statement of claim is dismissed.

[134] The defendants' motion for further and better particulars is dismissed.

[135] The City's motion to amend its statement of claim is granted.

[136] The Sheegl Defendants' motion to sever is granted.

[137] The Sheegl Defendants' motion to strike the cross-claim of the Consultant Defendants is dismissed.



C.J.Q.B.