In the Court of Appeal of Alberta

Citation: Landry v Aurora Cannabis, Inc, 2026 ABCA 131

Date: 20260423
Docket: 2503-0141AC
Registry: Edmonton

Between:

Robert Landry and Gill Fruchter
on Their Own Behalves and As Proposed Representative Plaintiffs

Respondents

- and -

Aurora Cannabis, Inc, Terry Booth and Glenn Ibbott

Appellants

The Court:

The Honourable Justice Kevin Feehan
The Honourable Justice Alice Woolley
The Honourable Justice Tamara Friesen

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice M. E. Burns
Dated and Filed on the 25th day of June, 2025
(2025 ABKB 387, Docket: 2003 12747)

Memorandum of Judgment

The Court:

I. Overview

[1] Aurora Cannabis, Terry Booth, and Glenn Ibbott appeal a decision of a case management judge dismissing their application, under rr 3.64 and 3.68(2)(b) & (d) of the *Alberta Rules of Court*, AR 124/2010, to strike the amended statement of claim filed by Robert Landry and Gill Fruchter, as proposed representative plaintiffs in a class action. They also appeal the dismissal of Aurora's alternate application to disallow the addition of Mr Fruchter as a proposed representative plaintiff and to strike amendments to 18 paragraphs of the amended statement of claim.

[2] For the reasons below, the appeal is dismissed.

II. Background

[3] Prior to September 11, 2019, Mr Landry owned 225,000 shares of Aurora stock then worth approximately $1.9 million.

[4] On September 11, 2019, Aurora issued its financial statements and Management Discussion and Analysis for the fourth quarter of 2019, and its 2019 annual information form, reporting a successful June 30, 2019 year end and a projected bullish forecast for the first quarter of 2020, ending September 30, 2019.

[5] On September 12, 2019, Aurora executives stated during an investor conference call that they expected Aurora to see growth in its core business and anticipated a "plateau" of demand between then and the end of the year.

[6] On September 20, 2019, Aurora released its 2019 Annual Report reiterating the company's representations of September 11 and 12, 2019.

[7] On November 14, 2019, Aurora announced its quarterly financial statements and Management Discussion and Analysis for the first quarter of 2020, which Aurora executives had reported on September 11 and 12, and they were materially worse than represented. Sales had declined by 25%. Aurora's share price immediately declined approximately 18%. On November 18, there was a second partial correction of the representations that had been made by Aurora on September 11 and 12, 2019, through a published article in which an analyst said "it would be fair for investors not to believe" Aurora management.

[8] On November 20, 2019, Mr Landry sold 75,000 Aurora shares, leaving him with 150,000 shares. On November 21, 2019, Mr Landry purchased and sold 175,000 shares in two separate

transactions. There is a dispute as to whether he purchased and then sold the same shares on that date or if he sold old shares that he purchased prior to September 11, 2019, and then purchased new shares.

[9] On November 22, 2019, Mr Landry purchased and sold 169,000 shares, and again, there is a dispute as to which shares were purchased and which shares sold.

[10] On December 21, 2019, Aurora announced that the executive who had made the September 12 oral statement that the company's first quarter 2020 earnings would "plateau", was abruptly resigning. Aurora's share price declined 10% following this announcement. Mr Landry and Mr Fruchter say this announcement constituted the final full public correction.

[11] By December 21, 2019, Mr Landry held 150,000 shares with an approximate value of $500,000.

[12] The trading activity of Mr Fruchter is not precisely set out in the record. He purchased shares in Aurora on September 25, 2019, after the representations of September 11 and 12, 2019, and held those shares through the period of November 14 through December 21, 2019. It is said he discovered his loss in value per share in December, 2019.

III. Litigation

[13] Mr Landry filed a statement of claim on August 10, 2020, asserting a negligent misrepresentation common law claim and a statutory claim under s 211.03 of the *Securities Act*, RSA 2000, c S-4, liability for secondary market disclosure.

[14] On January 31, 2022, Mr Landry filed his application for permission to proceed under s 211.08 of the *Securities Act*, with affidavit in support, attaching his trading records.

[15] On December 12, 2023, Aurora filed its brief of argument on the permission to proceed application, submitting that Mr Landry was not a proper class member given the timing of his purchases and sales of Aurora shares. In response, Mr Landry requested an adjournment of the application for the purpose of adding a second proposed representative plaintiff, and on March 8, 2024, the amended statement of claim was filed in its current form.

[16] On March 21, 2024, Aurora brought its application to strike the amended statement of claim or in the alternative to disallow Mr Fruchter as a proposed representative plaintiff and to strike the indicated paragraphs of the claim, under r 3.68, striking of a claim, and r 3.64, disallowing an amendment, of the *Alberta Rules of Court*.

[17] Aurora's application was heard on November 18, 2024, and in reasons for decision of the case management judge was dismissed on June 25, 2025: ***Landry v Aurora Cannabis Inc***, 2025 ABKB 387. Notice of appeal from that dismissal was filed on July 24, 2025.

IV. Grounds of Appeal

[18] Aurora says the case management judge erred:

(a) in concluding that Mr Landry was a member of the classes pleaded in the statement of claim and rejecting Aurora's assertion that the action was an abuse of process;

(b) in permitting Mr Landry's re-pleaded claim for negligent misrepresentation to proceed while not meeting the requirements for a claim in negligent misrepresentation and because it was out of time, and

(c) as a matter of statutory interpretation, including in finding that Mr Fruchter's claims were not out of time under the provisions of the *Securities Act*, the *Class Proceedings Act*, SA 2003, c C-16.5, and the *Limitations Act*, RSA 2000, c L-12.

V. Standard of Review

[19] The standard of review on questions of law is correctness, on questions of fact is palpable and overriding error, and on questions of mixed law and fact is palpable and overriding error unless there is an extricable error of law: ***Housen v Nikolaisen***, 2002 SCC 33, paras 7-37, [2002] 2 SCR 235; ***Calgary Co-operative Association Limited v Federated Co-operatives Limited***, 2025 ABCA 142, para 14; ***Blume v Blume***, 2026 ABCA 33, para 12.

[20] A chambers judge's determination on an application to strike is owed a high level of deference and is reviewed for reasonableness: ***Dixon v Canada (Attorney General)***, 2012 ABCA 316, para 7, [2013] 1 CNLR 52. Likewise, a determination as to whether an action is an abuse of process is accorded deference: ***Lameman v Alberta***, 2013 ABCA 148 at para 12. The decision of a case management judge is afforded particular deference because of the judge's familiarity with the case and the need to balance many competing factors: ***Waquan v Canada***, 2004 ABCA 279, para 10, 33 Alta LR (4th) 231; ***Thoreson v Alberta (Infrastructure)***, 2020 ABCA 146, para 15.

[21] The determination on whether a limitation period has expired, absent legal error, is a question of mixed fact and law and is entitled to deference: ***Tran v Kerr***, 2014 ABCA 350, para 12, 584 AR 306; ***Hole v Hole***, 2016 ABCA 34, para 32, 393 DLR (4th) 708.

VI. Analysis

a) Landry as a member of the classes

[22] Section 211.03(1) of the *Securities Act* provides that where a company "releases a document that contains a misrepresentation, a person ... who acquires or disposes of the issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has ... a right of action for damages ...".

[23] Substantially identical provisions are found in ss 211.03(2) and (3) for public oral statements by the company or an influential person with apparent authority from the company.

[24] The issue here is limited to whether Mr Landry was a person who acquired or disposed of Aurora security between the document release or oral statements of September 11 and 12, 2019, and the partial corrections of November 14, 18, 29, and December 21, 2019. If so, he is a member of the class asserting the statutory claim. Likewise, while the common law negligent misrepresentation claim has additional requirements including proof of reliance, it too requires that the plaintiff acquire or dispose of Aurora security after the alleged misrepresentation but prior to the correction.

[25] The statement of claim filed by Mr Landry claimed that he "purchased thousands of shares of ACB [and] realized a substantial loss by holding these securities until after the Public Corrective Statements".

[26] In the amended statement of claim, Mr Landry expanded that factual information by indicating he owned shares before the start of the class period, sold some of those pre-owned shares during the class period, purchased shares during the class period and held those shares to the end of the period, indicating that in those purchases, sales, and holdings, he relied upon the continuous disclosures, news articles, and analysis reports to inform his decisions.

[27] Aurora says there is no evidence Mr Landry purchased shares between September 11 and November 14, 2019, and argues the public corrective statement on November 14 was the "principal" public corrective statement and should be treated as the end date for the claim period. As such, Aurora says, Mr Landry has no statutory or common law claim and is not a member of either class. Therefore, the action is an abuse of process and the chambers judge erred in refusing to strike it on this basis.

[28] It is clear Mr Landry sold and purchased shares on November 20, 21, and 22, 2019, before the final correction of December 21, 2019. That accords with the case management justice's decision that the classes as defined include persons who bought shares after September 11, 2019, and held some or all of these shares until after the alleged misrepresentation was, according to the

plaintiff's pleadings, entirely corrected on December 21, 2019. She held the class definitions should allow for initial identification of potential class members without reference to the merits of their claims and should not depend on the outcome of the litigation: ***Western Canadian Shopping Centres Inc v Dutton***, 2001 SCC 46, para 38, [2001] 2 SCR 534; ***Windsor v Canadian Pacific Railway Ltd***, 2007 ABCA 294, para 18, 79 Alta LR (4th) 244.

[29] In determining the final date for the proposed class period, Mr Landry says he pleaded and it should be determined as December 21, 2019, the date of the resignation of the executive who made the September 11 and 12, 2019 representations, which he says constitutes a public correction: ***Kauf v Colt Resources, Inc***, 2019 ONSC 2179, paras 173-175, 145 OR (3d) 100. He has clearly pleaded that he was a class member between September 11 and December 21, 2019.

[30] This application is brought at a very early stage in the class action proceedings, before permission to proceed has been argued or granted. It does not require that at this early stage it needs to have been determined either that the correction was not completed until December 21, 2019 or that, as a matter of law, to establish statutory misrepresentation a party must have acquired shares after the misrepresentation date. On the face of the pleadings, the conclusion of the case management judge should be granted deference in determining that Mr Landry is a member of the class, during the class period, as described. There is no basis to interfere with her conclusion that the action is not an abuse of process, a claim with little merit.

b) Negligent misrepresentation claim

[31] Aurora also submits that Mr Landry's revised negligent misrepresentation claim is untenable. It says Mr Landry cannot prove he relied upon the representations of September 11 and 12, 2019, because his trading records disclose he had already purchased his Aurora shares before that date, nor can Mr Landry show he suffered damages due to representations because he purchased shares prior to the misrepresentation and sold them after it was corrected. Mr Landry replies it is not plain and obvious that his claim in negligent misrepresentation is bound to fail. On an application to strike, the pleadings should be read generously, and the court must assume the facts pleaded are true. At this stage, it is not the duty of the court to evaluate the merits of the proceeding: ***Atlantic Lottery Corp Inc v Babstock***, 2020 SCC 19, paras 14, 88, [2020] 2 SCR 420; ***Bruno v Samson Cree Nation***, 2021 ABCA 381, para 61; ***Klassen v Canadian National Railway Company***, 2023 ABCA 150, para 25. Mr Landry says he bought, sold, and continued to hold shares throughout the class period in reliance on Aurora's negligent representations and elected the recessionary measure of damages; it is not plain and obvious this claim is doomed to fail: ***Green v Canadian Imperial Bank of Commerce***, 2014 ONCA 90, para 104, 370 DLR (4th) 402, aff'd on this point 2015 SCC 60, paras 124-128, [2015] 3 SCR 801 [***Green SCC***]; ***Tietz v Bridgemark Financial Corp***, 2024 BCSC 1166, paras 179-181.

[32] The case management judge did not err in finding that the substantive issues in determination of the validity of the negligent misrepresentation claim, and determination of damages, ought to be left for the certification or trial stages of this litigation.

c) Limitations and tolling

[33] The amended statement of claim, adding Mr Fruchter as a proposed representative party, was filed on March 8, 2024, three years and six months after the final date in the alleged class period. Aurora says that occurred outside any relevant limitation period, is time barred, and the resulting claim is hopeless: ***Dow Chemical Canada Inc v Nova Chemical Corporation***, 2010 ABQB 524, paras 20, 21, 35 Alta LR (5th) 51. The issue, it says, is whether the time limitations have been tolled such that the running of the limitation period had been paused or stopped. Tolling may have been effected by the provisions of the *Securities Act* or *Class Proceedings Act*. Tolling under either of those statutes would prevent the running of the limitation period.

[34] The relevant provisions of the *Securities Act* are:

> 211.095 (1) No action shall be commenced under section 211.03,
>
> (a) in the case of misrepresentation in a document, later than the earlier of
>
> (i) 3 years after the date on which the document containing the misrepresentation was first released, and
>
> ...
>
> (b) in the case of a misrepresentation in a public oral statement, later than the earlier of
>
> (i) 3 years after the date on which the public oral statement containing the misrepresentation was made, and
>
> ....
>
> (2) A limitation period established by subsection (1) in respect of an action is suspended on the date an application for leave under section 211.08 is filed with the court ....

[35] Note that the tolling provision, s 211.09(2), was specifically added on December 17, 2014, following the equivalent Ontario amendment on July 24, 2014 to provide for the commencement of the tolling period on application for permission to proceed rather than on granting of that permission: *Building Opportunity and Securing Our Future Act (Budget Measures)*, 2014, SO

2014, c 7, sch 28, s 15; *Securities Amendment Act,* 2014, SA 2014, c 17, s 47. As a result, the contrary decision on this point in ***Green SCC***, which concluded that tolling for the statutory claim only begins after leave is granted, is not relevant in so far as it interpreted the previous tolling provision in the Ontario class proceedings legislation; that is, the provision prior to the addition of the current provision addressing when tolling begins in the context of this statutory claim: ***Green SCC*** at paras 15, 43, 185.

[36] The relevant provisions of the *Class Proceedings Act* are:

> **2(1)** One member of a class of persons may commence a proceeding in the Court on behalf of the members of that class.
>
> ....
>
> **40(1)** ... any limitation period applicable to a cause of action asserted in a proceeding, whether or not the proceeding is ultimately certified, is suspended in favour of a person if another proceeding is commenced and it is reasonable for the person to assume that he or she is a class member or subclass member for the purposes of that other proceeding.

[37] It is common ground that the amended statement of claim, adding Mr Fruchter, was filed on March 8, 2024, more than three years after the date on which the document or public oral statement was made, on September 11 and 12, 2019. It is also agreed that the application for leave for permission to proceed was filed on January 31, 2022, within that three-year period.

[38] However, Aurora says the tolling provision in the *Securities Act* only protects the person who served the application for permission to proceed, Mr Landry, and not any other potential class members, including Mr Fruchter. The case management judge did not agree.

[39] The case management judge found that given the ordinary meaning of s 211.095 of the *Securities Act*, the limitation period was tolled "in respect of an action" on the date an application for permission to proceed was filed. She said, "[t]here is only one action here, and an application under that section was made such that the limitation period is tolled".

[40] Notably, Alberta courts have held that s 40 of the *Class Proceedings Act* suspends the operation of the limitation period for all potential class members, regardless of whether they have subjective knowledge of the proceeding: ***Davey v Canadian National Railway Company***, 2006 ABQB 704, para 8; ***Vander Griendt v Canvest Capital Management Corp***, 2014 ABQB 542, paras 30, 31, 596 AR 282; ***Smith v Lafarge Canada Inc***, 2022 ABQB 289, para 28.

[41] This issue was directly addressed by the Supreme Court of Canada in ***Green SCC*** (per Côté J, with Cromwell J concurring on the statutory interpretation issues, see para 130). The Court

assessed the scope of protection granted by the relevant equivalent Ontario provisions for the protection of all potential class members. On this point ***Green SCC*** remains the governing law, since the issue is distinct from the question of when tolling for the statutory claim is triggered, which was the subject of the subsequent statutory amendment discussed above. With respect to the scope of protection the Court held at para 60:

> The purpose of s. 28 *CPA* is to protect potential class members from the winding down of a limitation period until the feasibility of the class action is determined, thereby negating the need for each class member to commence an individual action in order to preserve his or her rights: *Coulson v. Citigroup Global Markets Canada Inc.*, 2010 ONSC 1596, 92 C.P.C. (6th) 301, at para. 49, quoted with approval by the Court of Appeal, 2012 ONCA 108, 288 O.A.C. 355, at para. 11. Once the umbrella of the right exists and is established by a potential class representative in asserting a cause of action, class members are entitled to take shelter under it as long as the right remains actively engaged. The provision is squarely aimed at judicial economy and access to the courts, encouraging the former while preserving the latter [emphasis added].

[42] Justice Côté explained that this interpretation, which extends the suspension of the limitation period to all potential class members, "promotes the purposes of the *CPA*, is compatible with the purpose and operation of [the] *OSA* and allows the class proceeding to remain an effective vehicle for secondary market liability claims": para 74; see also para 130 per Cromwell J and para 174 per Karakatsanis J). This aspect of ***Green SCC*** provides guidance on the protective purpose of class proceedings legislation and how to interpret it harmoniously with the statutory scheme for secondary market liability claims.

[43] That rationale applies equally to the tolling provisions under the Alberta *Class Proceedings Act* and *Securities Act*. The limitation period in respect of Mr Fruchter's common law misrepresentation claim was tolled under s 40 of the *Class Proceedings Act* when the common law action was commenced; and the limitation period in respect of Mr Fruchter's statutory claim was tolled by virtue of the Alberta *Class Proceedings Act* and *Securities Act* when the permission to proceed application was brought. There is no error in the case management justice's conclusion that Mr Fruchter's claims were within time.

[44] Aurora alternatively says the claim for common law negligent misrepresentation asserted in the statement of claim is barred by s 3(1) and not saved by s 6 of the *Limitations Act*. Those sections provide, in part:

> **3(1)** … if a claimant does not seek a remedial order within

> (a) 2 years after the date on which the claimant first knew, or in the circumstances ought to have known,
>
> > (i) that the injury for which the claimant seeks a remedial order had occurred,
> >
> > (ii) that the injury was attributable to conduct of the defendant, and
> >
> > (iii) that the injury, assuming liability on the part of the defendant, warrants bringing a proceeding, ...
>
> ... on pleading this Act as a defence, is entitled to immunity from liability in respect of the claim.
>
> ....
>
> **6(1)** Notwithstanding the expiration of the relevant limitation period, when a claim is added to a proceeding previously commenced, either through a new pleading or an amendment to pleadings, the defendant is not entitled to immunity from liability in respect of the added claim if the requirements of subsection ... (3) ... [is] satisfied.
>
> ...
>
> **(3)** When the added claim adds ... a claimant, ...
>
> > (a) the added claim must be related to the conduct, transaction or events described in the original pleading in the proceeding,
> >
> > (b) the defendant must have received, within the limitation period applicable to the added claim plus the time provided by law for the service of process, sufficient knowledge of the added claim that the defendant will not be prejudiced in maintaining a defence to it on the merits, and
> >
> > (c) the court must be satisfied that the added claim is necessary or desirable to ensure the effective enforcement of the claims originally asserted or intended to be asserted in the proceeding.

[45] The case management judge found the added claim "is not the same as a new cause of action": ***Greentree v Martin***, 2004 ABQB 365, para 13, 369 AR 263. The term "cause of action"

refers to the factual matrix giving rise to the claim rather than the legal nature of the claim: ***Condominium Corporation No 00311443 v Goertz***, 2022 ABQB 104, para 25. See also ***Di Filippo v Bank of Nova Scotia***, 2024 ONCA 33, para 40.

[46] The case management judge held that the amendments related to the same sequence of events and the same relationship between the prospective claimants and would not constitute added claims, as they merely particularized details raised in the original pleadings and were not outside the limits established by the *Limitations Act*.

[47] That decision of the case management judge does not disclose error.

VII. Conclusion

[48] The appeal is dismissed.

Appeal heard on April 7, 2026

Memorandum filed at Edmonton, Alberta
this 23rd day of April, 2026

REGISTRAR
FILED
23 Apr 2026
NL
Court of Appeal of Alberta

Feehan J.A.

Woolley J.A.

Friesen J.A.

Appearances:

V. DeMarco
J. Bradford
A. Morganti (no appearance)
A. Pelletier (no appearance)
for the Respondents

D.S. Murdoch
M.M. Zouravlioff (no appearance)
E.A. Turner (no appearance)
M.E. Walli (no appearance)
for the Appellants