



Court of Appeal File No. CA48578
Action4Canada, et al. v. His Majesty the King, et al.
Factum of the Respondents BC Ferries and Brittney Sylvester

COURT OF APPEAL

ON APPEAL FROM THE ORDER OF THE HONOURABLE JUSTICE ALAN ROSS OF THE SUPREME COURT OF BRITISH COLUMBIA PRONOUNCED ON THE 29TH DAY OF AUGUST, 2022

BETWEEN:

ACTION4CANADA, LINDA MORKEN, GARY MORKEN, JANE DOE #1, BRIAN EDGAR, AMY MURANETZ, JANE DOE #2, ILONA ZINK, FEDERICO FUOCO, FIRE PRODUCTIONS LIMITED, F2 PRODUCTIONS INCORPORATED, VALERIE ANN FOLEY, PASTOR RANDY BEATTY, MICHAEL MARTINZ, MAKHAN S. PARHAR, NORTH DELTA REAL HOT YOGA LIMITED, MELISSA ANNE NEUBAUER, JANE DOE #3

APPELLANTS
(PLAINTIFFS)

[Style of cause continued on next page]

**FACTUM OF THE RESPONDENTS
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CHRONOLOGY

Date	Event
August 17, 2021	The plaintiffs file a notice of civil claim (the “ NOCC ”) that exceeds 390 pages.
May 31, 2022	The chambers judge hears applications to strike the NOCC.
August 29, 2022	The chambers judge strikes the NOCC under Rule 9-5(1) of the <i>Supreme Court Civil Rules</i> for being prolix and orders the plaintiffs to pay costs forthwith and in any event of the cause.

OPENING STATEMENT

The plaintiffs filed a notice of civil claim (the “**NOCC**”) that exceeds 390 pages. It contains wide-ranging allegations of conspiracy, seeks rulings on questions of science, and alleges criminality in a civil pleading. The chambers judge struck the NOCC under Rule 9-5(1) of the *Supreme Court Civil Rules* for being prolix. He did not err.

The plaintiffs’ arguments on appeal fail to confront the chambers judge’s dispositive finding of prolixity. Beyond stating that they “take issue” with this finding, they do not even mention it. Absent any demonstrated—or even alleged—error in principle, the chambers judge’s discretionary decision to strike the NOCC for being prolix cannot be disturbed.

The various arguments that the plaintiffs *do* raise concern *obiter* statements in the chambers judge’s reasons. In any event, they have no merit.

The appeal should be dismissed, with costs.

PART 1 - FACTS

A. The Notice of Civil Claim

1. In 2021, an unincorporated organization, a handful of individuals (some unnamed), one estate, and three corporations sued nearly 20 government entities, office holders, and employees for losses allegedly caused by public safety measures implemented by Canada and British Columbia in response to the COVID-19 pandemic.¹

2. The plaintiffs' NOCC exceeds 390 pages. Part 1 ("The Facts") alone contains more than 1,300 paragraphs and subparagraphs and nearly 400 footnotes. Part 2 ("Relief Sought") includes over 200 requested declarations. Throughout, the NOCC contains wide-ranging allegations of conspiracy, make allegations against non-parties, seeks rulings on questions of science, and alleges criminality in a civil pleading. For example:

- a. The NOCC characterizes the COVID-19 pandemic as a "false pandemic" "designed and implemented for improper and ulterior purposes, at the behest of the WHO [World Health Organization]", controlled and directed by Billionaire, Corporate, and Organizational Global Oligarchs" such as Bill Gates in order to "install a New World (Economic) Order".²
- b. The NOCC alleges that "the WHO is not, nor ever has been, an objective, independent medical body, but is riddled with over-reaching socio-economic and political dictates of its funders who, inexplicably over and above the nation-states who fund-it, is heavily funded, and directed, through its 'WHO Foundation', and GAVI [the Global Alliance for Vaccines and Immunization], by international Billionaire Oligarchs, and Oligarch organizations such as Bill Gates, GAVI, the World Economic Forum".³
- c. The NOCC alleges that "[t]he 'social media', such as Google, Facebook, YouTube, Amazon owned and operated by the likes of Bill Gates, Mark

¹ Notice of Civil Claim [**NOCC**] (Appeal Record [**AR**], Tab 1).

² NOCC, Part 1, at paras. 155, 283 (AR, Tab 1, at 127-28, 316).

³ NOCC, Part 1, at para. 207 (AR, Tab 1, at 194).

Zuckerberg [*sic*], and, in Canada, the CBC, funded and controlled by the Federal Government, are knowingly playing in concert with this over-arching conspiracy, and in fact over-lapping conspiracies”.⁴

- d. The NOCC seeks declarations that “the PCR test [for COVID-19] has scientifically been debunked”, “cases’ [*sic*] do not equate to ‘deaths’ and ... the purported death rate [from COVID-19] is no higher than complications from the annual influenza”, “[t]he evidence [of COVID-19 transmission] is lacking and contrary to the scientific and medical evidence”, and “the declared rationales and motives, and execution of COVID Measures, by the WHO, are not related to a bona fide, nor an actual ‘pandemic’ ... but for other political and socio-economic reasons, motives, and measures at the behest of global Billionaire, Corporate and Organizational Oligarchs”.⁵
- e. The NOCC alleges that administering COVID-19 vaccines constitutes a “crime against humanity” contrary to the Nuremberg Code and the *Criminal Code*.⁶
- f. The NOCC seeks general damages of more than \$25 million and punitive damages of \$10 million.⁷

B. The Chambers Judge’s Discretionary Decision to Strike the NOCC

3. Multiple defendants applied to strike the NOCC under Rule 9-5(1) of the *Supreme Court Civil Rules*. The chambers judge granted these applications, with costs. In doing so, he made four main findings.

4. First, the chambers judge found that, at more than 390 pages, the NOCC is “clearly prolix” and “is not a pleading that can properly be answered by a responsive pleading”.⁸

⁴ NOCC, Part 1, at para. 216(d) (AR, Tab 1, at 215).

⁵ NOCC, Part 2, at paras. 289(c)-(e), 302 (AR, Tab 1, at 322, 329).

⁶ NOCC, Part 1, at para. 151(d) (AR, Tab 1, at 119); NOCC, Part 2, at para. 333 (AR, Tab 1, at 368).

⁷ NOCC, Part 2, at para. 324 (AR, Tab 1, at 347-60).

⁸ *Action4Canada v. British Columbia (Attorney General)*, 2022 BCSC 1507 [BCSC Reasons], at paras. [32](#), [45](#) (AR, Tab 13, at 490, 494).

He noted that it “describes wide-ranging global conspiracies”, “seeks rulings of the court on issues of science”, and “includes improper allegations, including criminal conduct and ‘crimes against humanity’”.⁹ He stated that it is “bad beyond argument”.¹⁰

5. Second, the chambers judge found that the NOCC “is not a document that the court can mend by striking portions”.¹¹ Accordingly, he struck it in its entirety.¹²

6. Third, the chambers judge found that, assuming the facts pleaded to be true, there is a “prospect” that the plaintiffs could put forward a properly pleaded claim.¹³ On this basis, he granted the plaintiffs leave to amend their improper pleading.¹⁴ He cautioned, however, that “if the next [pleading] contains the same, or similar, problems, then the defendants’ arguments [that the entire action is an abuse of process or clearly frivolous and vexatious] will be strengthened”.¹⁵

7. Fourth, the chambers judge ordered the plaintiffs to pay the defendants’ costs of answering to the NOCC, payable forthwith irrespective of the outcome of the litigation.¹⁶

PART 2 - ISSUES ON APPEAL

8. The plaintiffs’ various arguments can be grouped into five grounds of appeal:

- a. Did the chambers judge err in finding the NOCC to be prolix?
- b. Did the chambers judge make improper findings of fact?
- c. Did the chambers judge err in stating that many of the plaintiffs’ allegations are non-justiciable?

⁹ BCSC Reasons, at para. [45](#) (AR, Tab 13, at 494).

¹⁰ BCSC Reasons, at para. [45](#) (AR, Tab 13, at 494).

¹¹ BCSC Reasons, at para. [46](#) (AR, Tab 13, at 494).

¹² BCSC Reasons, at para. [48](#) (AR, Tab 13, at 494).

¹³ BCSC Reasons, at para. [71](#) (AR, Tab 13, at 501).

¹⁴ BCSC Reasons, at para. [72](#) (AR, Tab 13, at 501).

¹⁵ BCSC Reasons, at para. [73](#) (AR, Tab 13, at 501).

¹⁶ BCSC Reasons, at paras. [75-76](#) (AR, Tab 13, at 502).

- d. Did the chambers judge misstate the law on declarations?
 - e. Did the chambers judge err in ordering the plaintiffs to pay costs?
9. The answer to each question is “no”. The appeal should be dismissed, with costs.

PART 3 - ARGUMENT

10. BC Ferries and Brittney Sylvester (together, “**BC Ferries**”) adopt the submissions made by the other respondents and make the following submissions.

A. Standard of Review

11. A chamber judge’s decision to strike a pleading under Rule 9-5(1) for being prolix is a discretionary decision that attracts deference on appeal.¹⁷ The correctness standard applies only to extricable errors of law.¹⁸ Here, none exist.

B. No Error in Finding the NOCC to Be Prolix

12. The plaintiffs state that they “take issue” with the chambers judge’s finding of prolixity.¹⁹ Yet they fail to explain the nature of, or basis for, this disagreement. Absent any demonstrated—or even alleged—error in principle, the chambers judge’s discretionary decision to strike the NOCC for being prolix is dispositive.

13. Rules 3-1(2)(a) and (c) provide that a notice of civil claim “must” set out a “concise statement” of the “material facts” and a “concise summary” of the relief sought. This mandatory requirement²⁰ of concision is repeated—twice—in Form 1.

14. Pleadings may be struck under Rule 9-5(1) if they are so prolix or confusing that it is difficult or impossible for a defendant to understand what is being pleaded and respond

¹⁷ *FORCOMP Forestry Consulting Ltd. v. British Columbia*, 2021 BCCA 465, at para. [15](#), leave to appeal refused [2022 CanLII 56781](#) (S.C.C.); *Levy v. British Columbia*, 2018 BCCA 36 [[Levy](#)], at paras. [8](#), [52](#).

¹⁸ *Levy* (BCCA, 2018), *supra* note 17, at para. [8](#).

¹⁹ Plaintiffs’ Factum, “Overview”.

²⁰ *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362, at para. [44](#).

to it.²¹ As the chambers judge recognized, the hallmark of a prolix pleading is excessive length that impairs the defendant's ability to know the case to meet.²²

15. The chambers judge's finding of prolixity is unimpeachable. At more than 390 pages, the NOCC is clearly prolix. But sheer length is not the only problem. The NOCC's scope is sweeping and unconstrained: it makes wide-ranging allegations—even against non-parties—that have little or no connection to any justiciable question of law. It contains extensive passages of completely irrelevant information and convoluted legal arguments. And as the chambers judge found, it is impenetrable: “[it] is not a pleading that can properly be answered by a responsive pleading”.²³ As such, it was properly struck.

16. The plaintiffs have failed to allege—let alone demonstrate—any error in principle affecting the chambers judge's discretionary decision to strike the NOCC for being prolix. On this basis alone, the appeal should be dismissed. Nonetheless, for completeness, BC Ferries addresses the plaintiffs' various arguments, which concern *obiter* statements in the chambers judge's reasons, in summary form below.

C. No Improper Findings of Fact

17. The plaintiffs accuse the chambers judge of making improper “global findings of fact”.²⁴ But the chambers judge made no findings of fact at all. Rather, he expressly stated—twice—that he “assumed that allegations are capable of being proved”.²⁵

18. The plaintiffs attack the chambers judge's *obiter* statement that “[m]any of the allegations contained in the NOCC do not accord with, and specifically challenge, the mainstream understanding of the science underlying both the existence of, and the

²¹ *Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Congress*, 1999 CanLII 5860 (B.C.S.C.), at para. 47; *The Owners, Strata Plan LMS3259 v. Sze Hang Holding Inc.*, 2009 BCSC 473, at para. 36; *Gill v. Canada*, 2013 BCSC 1703, at para. 7.

²² BCSC Reasons, at paras. 48, 71 (AR, Tab 13, at 494, 501).

²³ BCSC Reasons, at para. 45 (AR, Tab 13, at 494).

²⁴ Plaintiffs' Factum, Part 3, at para. 20(a).

²⁵ BCSC Reasons, at paras. 27, 50(a) (AR, Tab 13, at 489, 495).

government's responses to the COVID-19 pandemic".²⁶ But this *obiter* statement is entirely consistent with the plaintiffs' own pleading. The NOCC states that "the World Health Organization, our federal, provincial, and municipal governments, and the mainstream media" all "propagate" "false" information.²⁷ Thus, on the plaintiffs' own pleading, their allegations run counter to, and challenge, mainstream understandings.

D. No Error in Stating That Many Allegations Are Non-Justiciable

19. The plaintiffs wrongly argue that the chambers judge erred in stating that the NOCC "seeks rulings of the court on issues of science" and that "much of the NOCC relates to non-justiciable issues".²⁸ In fact, the chambers judge's statements accurately characterize the NOCC, which seeks rulings on non-justiciable questions of science.

20. Justiciability asks whether a question is appropriate for a court to decide.²⁹ Some questions, like the constitutional validity of legislation,³⁰ are appropriate for a court to decide. Other questions, like scientific³¹ or ecclesiastical³² debates, are not.

21. As the chambers judge found, the NOCC seeks declaratory relief about scientific issues.³³ This is not the court's role.

E. No Misstatement on the Law of Declarations

22. The plaintiffs wrongly argue that "virtually all" of the declaratory relief sought in the NOCC is constitutional, the chambers judge failed to appreciate that declarations of constitutional invalidity (unlike other declarations) are not discretionary, and "the Courts

²⁶ BCSC Reasons, at para. [26](#) (AR, Tab 13, at 488).

²⁷ NOCC, Part 1, at para. 176 (AR, Tab 1, at 166).

²⁸ Plaintiffs' Factum, Part 1, at paras. 3-4.

²⁹ *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26 [*Wall*], at para. [32](#).

³⁰ *Thorson v. Attorney General of Canada* (1974), [1975] 1 S.C.R. 138, at [151](#).

³¹ *ter Neuzen v. Korn*, [1995] 3 S.C.R. 674, at para. [51](#). See also *Palmer v. Stora Kopparbergs Bergslags AB*, 1983 CanLII 2898 (N.S.S.C.), at para. [552](#).

³² *Wall* (SCC, 2018), *supra* note 29, at para. [25](#).

³³ BCSC Reasons, at para. [55](#) (AR, Tab 13, at 496).

are under a *duty* to review legislation for constitutional compliance”.³⁴ These arguments misapprehend the plaintiffs’ own pleading and the chambers judge’s reasons.

23. First, the NOCC seeks not only declarations of constitutional invalidity, but also declarations of fact. For example, as the chambers judge noted,³⁵ the NOCC seeks “[a] Declaration that the declared rationales and motives, and execution of COVID Measures, by the WHO, are not related to a bona fide, nor an actual ‘pandemic’, ... but for other political and socio-economic reasons, motives, and measures at the behest of global Billionaire, Corporate and Organizational Oligarchs”.³⁶

24. Second, in stating that “declaratory relief remains discretionary”, the chambers judge was addressing the fact that “the NOCC seeks a number of declarations *of fact*”.³⁷ He never suggested that the plaintiffs might be denied declaratory relief on a discretionary basis due to the constitutional nature of some of their claims.

25. Third, the chambers judge never suggested that courts have no general duty to review legislation for constitutional compliance. To the contrary, he expressly acknowledged that “constitutional rights must be protected, even within a pandemic”.³⁸

26. In reality, the plaintiffs seek an unqualified right to bring a constitutional challenge in court without having to comply with the court’s rules. No such right exists. No matter how much the plaintiffs may wish to bring a constitutional challenge in court, they cannot bypass mandatory rules of civil procedure.

³⁴ Plaintiffs’ Factum, Part 3, at paras. 3, 20 [emphasis in original].

³⁵ BCSC Reasons, at para. [57](#) (AR, Tab 13, at 498).

³⁶ NOCC, Part 2, at para. 302 (AR, Tab 1, at 329).

³⁷ BCSC Reasons, at para. [56](#) [emphasis added] (AR, Tab 13, at 497).

³⁸ BCSC Reasons, at para. [63](#) (AR, Tab 13, at 499).

F. No Basis to Consider the Merits

27. The plaintiffs argues that some U.S., Indian, and Canadian cases “clearly weigh[] against striking this claim”.³⁹ This argument improperly invites this Court to consider the merits of the underlying claims. This appeal is not about the merits; it is about prolixity.

G. No Error in Ordering Costs

28. The plaintiffs allege that the result in the court below was “split”, and therefore the chambers judge should not have awarded costs to the defendants.⁴⁰ But the result was hardly “split”: the chambers judge ordered that the NOCC be struck in its entirety. Although the chambers judge granted the plaintiffs leave to amend their improper pleading, this was no victory for the plaintiffs. Rather, it was the alternative relief expressly sought by the Attorney General of Canada.⁴¹

29. In any event, the chambers judge’s costs award is a discretionary decision that attracts deference absent an error in principle.⁴² Here, none exists, or is even alleged.

PART 4 - ORDERS SOUGHT

30. BC Ferries seeks an order dismissing the appeal, with costs.

DATED at Vancouver, British Columbia, this 23rd day of January, 2023.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



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³⁹ Plaintiffs’ Factum, Part 3, at para. 12.

⁴⁰ Plaintiffs’ Factum, at para. 5.

⁴¹ Attorney General of Canada’s Notice of Application, Part 1, at para. 2 (AR, Tab 5, at 428).

⁴² *Sutherland v. Attorney General of Canada*, 2008 BCCA 27, at para. [24](#).

APPENDICES: LIST OF AUTHORITIES

Authority	Factum Para. #
Case Law	
<i>Action4Canada v. British Columbia (Attorney General)</i> , 2022 BCSC 1507	4-7, 14-15, 17-18, 21, 23-25
<i>Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Congress</i> , 1999 CanLII 5860 (B.C.S.C.)	14
<i>FORCOMP Forestry Consulting Ltd. v. British Columbia</i> , 2021 BCCA 465 , leave to appeal refused 2022 CanLII 56781 (S.C.C.)	11
<i>Gill v. Canada</i> , 2013 BCSC 1703	14
<i>Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall</i> , 2018 SCC 26	20
<i>Levy v. British Columbia</i> , 2018 BCCA 36	11
<i>Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.</i> , 2021 BCCA 362	13
<i>Palmer v. Stora Kopparbergs Bergslags AB</i> , 1983 CanLII 2898 (N.S.S.C.)	20
<i>Sutherland v. Attorney General of Canada</i> , 2008 BCCA 27	29
<i>ter Neuzen v. Korn</i> , [1995] 3 S.C.R. 674	20
<i>The Owners, Strata Plan LMS3259 v. Sze Hang Holding Inc.</i> , 2009 BCSC 473	14
<i>Thorson v. Attorney General of Canada</i> (1974), [1975] 1 S.C.R. 138	20

APPENDICES: ENACTMENTS

Supreme Court Civil Rules, B.C. Reg. 168/2009

Rule 9-5 — Striking Pleadings

Scandalous, frivolous or vexatious matters

(1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

- (a) it discloses no reasonable claim or defence, as the case may be,
- (b) it is unnecessary, scandalous, frivolous or vexatious,
- (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding,
or
- (d) it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.