



CA48578
Action4canada vs. His Majesty the King in Right British Columbia
Respondents' Factum

COURT OF APPEAL

ON APPEAL FROM the order of Justice Ross of the Supreme Court of British Columbia pronounced on August 29, 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

(Plaintiffs/Appellants)

AND:

HIS MAJESTY THE KING IN RIGHT BRITISH COLUMBIA, PRIME MINISTER JUSTIN TRUDEAU, CHIEF PUBLIC HEALTH OFFICER THERESA TAM, DR. BONNIE HENRY, PREMIER JOHN HORGAN, ADRIAN DIX, MINISTER OF HEALTH, JENNIFER WHITESIDE, MINISTER OF EDUCATION, MABLE ELMORE, PARLIAMENTARY SECRETARY FOR SENIORS' SERVICES AND LONG-TERM CARE, MIKE FARNWORTH, MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL, BRITISH COLUMBIA FERRY SERVICES INC. (OPERATING AS BRITISH COLUMBIA FERRIES), OMAR ALGHABRA, MINISTER OF TRANSPORT, VANCOUVER ISLAND HEALTH AUTHORITY, THE ROYAL CANADIAN MOUNTED POLICE (RCMP), AND THE ATTORNEY GENERAL OF CANADA, BRITTNEY SYLVESTER, PETER KWOK, PROVIDENCE HEALTH CARE, CANADIAN BROADCASTING CORPORATION, TRANSLINK (BRITISH COLUMBIA)

(Defendants/Respondents)

RESPONDENTS' FACTUM

Peter Kwok, TransLink (British Columbia)

**FACTUM OF THE RESPONDENTS
PETER KWOK AND TRANSLINK (BRITISH COLUMBIA)**

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

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CHRONOLOGY

Date	Event
August 17, 2021	The Plaintiffs file a 391 page notice of civil claim (the “NOCC”).
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, with leave to amend and orders the plaintiffs to pay costs forthwith and in any event of the cause (the “Chambers Decision”).

OPENING STATEMENT

Justice Ross struck the Plaintiffs 391 page long NOCC under Rule 9-5(1) of the *Supreme Court Civil Rules* for being prolix.

His reasons are straightforward and consistent with the law. He found that the NOCC was prolix because it made wide-ranging allegations regarding a coordinated global conspiracy related to the “false” COVID-19 pandemic, sought rulings on issues of science and made improper allegations of criminal conduct that could not properly be answered in a responsive pleading. Given the length of the NOCC and the extent of its deficiencies, Justice Ross found that a piecemeal striking and amendment could not practically be achieved, and so ordered the entire NOCC to be struck. Crucially, Justice Ross granted the Plaintiff leave to amend, on the assumption that the plaintiffs’ allegations, if properly pleaded, could be capable of being proven at trial.

The plaintiffs’ appeal fails to identify a reversible error or address any of Justice Ross’ reasons for striking the NOCC. Instead the plaintiffs fixate on obiter comments concerning the plaintiffs conspiracy allegations related to the COVID-19 pandemic. The plaintiffs’ assert that Justice Ross exceeded his jurisdiction in making global findings of fact in this area, seeming to ignore that Justice Ross granted the plaintiffs leave to amend, on the assumption that the plaintiffs’ allegations, if properly pleaded, could be capable of being proven at trial.

In any event, Justice Ross did not err in his decision. The NOCC is definitively prolix.

The appeal should be dismissed, with costs.

PART 1 – STATEMENT OF FACTS

A. The Notice of Civil Claim

1. In 2021 the plaintiffs sued the defendants for alleged losses they say they suffered as a result of the public safety and health measures introduced in response to the COVID-19 pandemic.¹

2. The NOCC spans 391 pages. It makes far-reaching claims of conspiracy involving the defendants but also non-parties related to what the plaintiffs claim is the "false" COVID-19 pandemic and the health and safety measures made in response to it.²

3. The NOCC alleges a coordinated global effort involving all levels of government, international and non-governmental organizations, local and international media, charities, and individuals like Bill Gates and Mark Zuckerberg to use the COVID-19 pandemic to "install a New World Order".³

4. The NOCC seeks non-justiciable declarations related to science and public health on the plaintiffs assertion that COVID-19 was a false pandemic.⁴

5. The Plaintiffs allege that the Defendants have violated the *Criminal Code*, the *Nuremberg Code*, and committed crimes against humanity.⁵

6. The NOCC seeks general damages of more than \$25 million and punitive damages of \$10 million.⁶

7. The relief and declarations sought appear to be against all of the defendants. It is not clear to Translink and Peter Kwok which declarations are sought against them as opposed to the others.

¹ Notice of Civil Claim [**NOCC**]

² NOCC, Part 1, at paras. 155, 283

³ NOCC, Part 1, at para. 208 (b)

⁴ NOCC, Part 1, at paras. 155, 283

⁵ NOCC, Part 1, at para. 151(d) (AR, Tab 1, at 119); NOCC, Part 2, at para. 333

⁶ NOCC, Part 2, at para. 324

B. Justice Ross' Decision to Strike the NOCC

8. Justice Ross struck NOCC in its entirety under Rule 9-5(1) of the *Supreme Court Civil Rules* because it was prolix. He described the NOCC in its entirety as “bad beyond argument”.⁷ He emphasized that it “describes wide-ranging global conspiracies” sought “rulings of the court on issues of science”, and included “improper allegations, including criminal conduct and ‘crimes against humanity’”.⁸

9. Justice Ross found that the NOCC “is not a document that the court can mend by striking portions”⁹. He noted that the NOCC contained “multiple allegations against the defendants individually and jointly”¹⁰, such that it “would be extremely difficult, if not impossible, for any individual defendant to determine whether it is required to respond to any particular allegation”¹¹. Justice Ross went on to find that the issues with the NOCC were so profound that it could not be saved by a piecemeal striking of the problematic portions, as doing so “would invite more confusion and greater expenditure of the resources of all concerned.”¹².

10. Despite the extensive and severe deficiencies in the NOCC, Justice Ross found that, there is a “prospect” that the plaintiffs could put forward a properly pleaded claim, assuming the facts in the NOCC were true.¹³ Accordingly he granted the plaintiffs leave to amend their improper pleading.¹⁴

11. Justice Ross ordered the plaintiffs to pay the defendants’ costs of answering to the NOCC, payable forthwith irrespective of the outcome of the litigation.¹⁵

⁷ Chambers Decision, at para. 45

⁸ Chambers Decision, at para. 45

⁹ Chambers Decision, at para. 46

¹⁰ Chambers Decision, at para. 35

¹¹ Chambers Decision, at para. 35

¹² Chambers Decision, at para. 47

¹³ Chambers Decision, at para. 71

¹⁴ Chambers Decision, at para. 72

¹⁵ Chambers Decision, at paras. 75-76 (AR, Tab 13, at 502).

PART 2 – ISSUES ON APPEAL

12. The issues on appeal are as follows:
 - a. Did Justice Ross err in striking the NOCC because it was prolix?
 - b. Did Justice Ross err in ordering the plaintiffs to pay costs?

PART 3 – ARGUMENT

13. Translink and Peter Kwok adopt the submissions made by the other respondents and make the following submissions.

- a. **Justice Ross did not err in striking the NOCC because it was prolix.**

Standard of Review

14. The decision to strike the NOCC pursuant to 9-5(1)(b) for being prolix, is a discretionary decision that attracts deference on appeal and requires the applicant to establish a “palpable and overriding error”¹⁶

15. Although the plaintiffs “take issue”¹⁷ with the chambers judge’s finding of prolixity, their factum does not present any substantive or relevant considerations in support of this position.

16. Pleadings serve to frame an action and define the issues court will be asked to decide, they advise the other party of the case to be met, they determine the extent of pre-trial procedures, and they guide the trial process. When pleadings are so prolix confusing, or raise irrelevancies, they may be struck as they impede the litigation.¹⁸

17. Justice Ross’ reasons follow the law with respect to striking pleadings for prolixity. He identifies multiple issues in the NOCC including, the length, the difficulty for the defendants to respond to the assertions of wide-ranging global conspiracies, the improper request for rulings of the court on issues of science, and the improper allegations of criminal conduct and crimes against humanity.

18. The plaintiffs have not presented any valid arguments in support of their position that Justice Ross’ made an error in finding that the NOCC was prolix. Even if they had, the NOCC’s excessive length, conspiratorial narrative and, it’s non-justiciable relief and

¹⁶ *FORCOMP Forestry Consulting Ltd. v. British Columbia*, 2021 BCCA 465 at paras. 14-15.

¹⁷ Plaintiffs’ Factum, “Overview”.

¹⁸ *The Owners, Strata Plan LMS3259 v. Sze Hang Holding Inc.*, 2009 BCSC 473, at para. 36

declarations sought demonstrate that the NOCC cannot properly be responded to and was properly struck for being prolix. It is bad beyond argument.

B. The Court did not err by awarding the defendants costs

19. Costs awards are subject to a highly deferential standard of review and will only be interfered with where “there is misdirection or the decision is so clearly wrong as to amount to an injustice”.¹⁹ Misdirection may include making an error as to the facts, taking into consideration irrelevant factors, or failing to account for relevant factors—all of which amount to an error in principle.²⁰

20. The chambers judge made the correct decision in striking the Notice of Civil Claim, and that the defendants were the victorious parties in seeking the same.

PART 4 – NATURE OF ORDERS SOUGHT

21. Translink and Peter Kwok seeks an order dismissing the appeal, with costs.

DATED at Vancouver, British Columbia, this 24th day of January, 2023.

All of which Respectfully submitted,



Signature of Kerem Tirmandi
Lawyer for the defendants,
Peter Kwok and TransLink (British Columbia)

¹⁹ *Agar v. Morgan*, 2005 BCCA 579 at para. 26.

²⁰ *Yung v. Jade Flower Investments Ltd.*, 2013 BCCA 170 at para. 17.

LIST OF AUTHORITIES

Authority	Page # in factum	Para # in factum
<i>Agar v. Morgan</i> , 2005 BCCA 579	5	19
<i>FORCOMP Forestry Consulting Ltd. v. British Columbia</i> , 2021 BCCA 465	4	14
<i>The Owners, Strata Plan LMS3259 v. Sze Hang Holding Inc.</i> , 2009 BCSC 473,	4	16
<i>Yung v. Jade Flower Investments Ltd.</i> , 2013 BCCA 170	5	19

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.