



No. VLC-S-S217586
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

ACTION4CANADA, KIMBERLY WOOLMAN, THE ESTATE OF JAQUELINE WOOLMAN, 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

AND

HER MAJESTY THE QUEEN 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

NOTICE OF APPLICATION

NAME OF APPLICANT: The Attorney General of Canada, the Royal Canadian Mounted Police (RCMP), Chief Public Health Officer Dr. Theresa Tam, and Omar Alghabra Minister of Transport ("Canada").

TO: the Plaintiffs

TAKE NOTICE that an application will be made by the Applicant to the presiding judge or master in Vancouver **BY VIDEOCONFERENCE at 9:45 am on February 3, 2022** for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. That the Notice of Civil Claim of the Plaintiffs be struck out in its entirety, without leave to amend, pursuant to Rule 9-5(1) on the grounds that it:
 - a. discloses no reasonable claim;
 - b. fails to conform to the requirements of proper pleadings;
 - c. is unnecessary, scandalous, frivolous, vexatious, embarrassing, and prejudicial; and,
 - d. is likewise an abuse of process of the court.
2. In the alternative, that the Plaintiffs be ordered to amend the Notice of Civil Claim in its entirety pursuant to the instructions of this Honourable Court; and
3. Costs.

PART 2: FACTUAL BASIS

1. The Plaintiff filed the Notice of Civil Claim (the “Claim”) on August 17, 2021.
2. The Claim is prolix, comprising 391 pages, alleging a long list of wrongs against a long list of defendants, including the AGC.
3. It does not plead with any clarity the sufficient material facts or a discernable legal basis for Canada to file a response.

PART 3: LEGAL BASIS

1. Canada relies on Rule 9-5 of the *Supreme Court Civil Rules*, and says that the Claim ought to be struck on the grounds that it discloses no reasonable claim.
2. Rule 9-5 of the *Supreme Court Civil Rules*, BC Reg 168/2009 (“*SCCR Rules*”) provides:

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.

3. The test to strike out a pleading is whether it is plain and obvious that the claim discloses no reasonable cause of action: *Nevsun Resources Ltd v Araya*, 2020 SCC 5 (“*Nevsun*”), para 64.
4. On a motion to strike, the Court is required to accept the facts as set out in the Claim: *Hunt v Carey Canada Inc*, [1990] 2 SCR 959; *Nevsun*, para 64.
5. The pleadings may be subjected to a “skeptical analysis” by the Court where the plaintiff has made speculative and “sweeping allegations of things like intolerance, deceit harassment, intimidation and falsifying documents against the defendants”: *Young v Borzoni*, 2007 BCCA 16, paras 30-32. The Supreme Court of Canada established that, “[n]o violence is done to the rule where allegations, incapable of proof, are not taken as proven”: *Operation Dismantle Inc v The Queen*, [1985] 1 SCR 441, para 27.
6. The function of pleadings is to clearly define the issues of fact and law to be determined by the Court. A plaintiff must plead all material facts necessary to formulate a cause of action. It is incumbent on the plaintiff to plead the facts upon which it relies in making its claim. The plaintiff is not entitled to rely on the possibility that new facts may come up as the case progresses: *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42, para 22.
7. Where pleadings are “overwhelmed with difficulty, the various provisions of [Rule] 9-5(1) may apply together”: *Grosz v Royal Trust Corporation of Canada*, 2020 BCSC 128 (“*Grosz*”), para 97.

The Claim generally

8. In the case at hand, the Claim contains conclusions of law without supporting material facts, fails to concisely plead material facts, fails to set out what allegations are being made against whom and generally fails to conform with the rules of pleadings, such that it is impossible to determine what causes of action the plaintiffs are attempting to advance.
9. The verbose and undefined nature of the Claim fails to ensure efficiency and fairness, and fundamentally does not allow the AGC to identify the claims to be addressed.
10. The Claim intertwines several seemingly distinct and unrelated events, and in so doing fails to clearly, concisely, and lucidly define the issues of fact and law the Court is being asked to determine: *Sahyoun v Ho*, 2013 BCSC 1143 (“*Sahyoun*”), paras 21 & 23.
11. The Claim fails to include a summary of the legal basis for the relief sought, which includes naming which cause of action each of the Plaintiffs seeks to advance against whom in Part 3 of the Claim: *SCCR Rules*, Rule 3-1(2)(c); *Sahyoun*, para 33.
12. The Claim describes several different events and fails to include a concise statement of the material facts, and “if a material fact is omitted, a cause of action is not effectively pled”: *Sahyoun*, para 25; *SCCR Rules*, Rule 3-1(2)(a).
13. That Claim fails to make clear what cause of action is alleged against each defendant and what relief is sought: *Sahyoun*, paras 30-31. Neither the AGC, nor the other Defendants should be required to divine the claims being made against them. They should not have to guess what it is they are alleged to have done: *Sahyoun*, paras 19 & 30-31.

Amending Pleadings

14. There are instances where amending a pleading or merely striking a portion of the pleadings will remedy any defects identified under Rules 3-1(2) or Rule 9-5. Striking the pleadings in full is permitted where “an amendment would be fruitless because the proposed claim, regardless of how it is drafted, is without legal foundation”: *Camp Development Corp v Greater Vancouver Transportation Authority*, 2009 BCSC 819 (aff’d 2010 BCCA 284),

para 19. Where pleadings are fundamentally deficient and lack particularized damages, then it is better to strike the claim than amend: *Grosz*, para 109.

Costs

15. Canada asks for its costs fixed as a lump sum of \$550 payable forthwith, pursuant to Rule 14-1(1)(d) and (15).
16. Pursuant to Rules 14-1(1)(d) and (15), the Court may award lump sum costs and set the amount of those costs. The award of costs is highly discretionary, and a lump sum costs award may reflect a judge's concern with the conduct of a party or be an appropriate and expedient means of avoiding further proceedings and submissions on costs from the parties: *Mousa v The Institute of Electrical and Electronics Engineers, Incorporated*, 2014 BCCA 415, para 34.

Part 4: MATERIAL TO BE RELIED ON

1. The Petition filed August 17, 2021;
2. *Supreme Court Civil Rules*, BC Reg 168/2009
3. Authorities cited in the notice of application; and
4. Such other authorities and materials as counsel may advise and the court may permit.

The applicant estimates that the application will take 3 hours.

☐ This matter is within the jurisdiction of a master.

☒ This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and

- (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
- (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Dated: January 13, 2022



Signature of lawyer for filing party

ATTORNEY GENERAL OF CANADA

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Solicitor for the Applicant

THIS Notice of Application is prepared and served by the Attorney General of Canada whose place of business and address for service is the Department of Justice Canada, British Columbia Regional Office, 900 - 840 Howe Street, Vancouver, British Columbia, V6Z 2S9

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs of Part 1 of this notice of application

☐ with the following variations and additional terms:

.....

Date:

[dd/mmm/yyyy]

.....
 Signature of ☐ Judge ☐ Master