



No. 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, ILLONA 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 the Applicants:** Peter Kwok and TransLink (British Columbia) (sic) (collectively, "the Applicants")

**To: The Plaintiffs**

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TAKE NOTICE that an application will be made by the applicants to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia, at 10:00am on May 31, 2022 via MS Teams for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. An order striking the whole of the plaintiffs' Notice of Civil Claim filed in this matter on August 17, 2021, without leave to amend.
2. In the alternative, an order striking paragraphs 9 (a) to (k) and 324 (h) of the Notice of Civil Claim, without leave to amend.
3. Costs.

**Part 2: FACTUAL BASIS**

1. The defendant "Translink (British Columbia)" is improperly named. Translink is a trade name, not a legal entity. The South Coast British Columbia Transportation Authority is the entity that oversees the provision of public transportation services in the lower mainland of British Columbia, including the Skytrain. The defendant, Peter Kwok, is a police constable employed by the South Coast British Columbia Transportation Authority Police Service.
2. The plaintiffs' Notice of Civil Claim (the "Claim") attempts to challenge the scientific basis and of the existence of the COVID -19 pandemic and the moral basis of the response to it, by the governments of British Columbia and Canada.
3. In addition to the defendants, Peter Kwok and TransLink, the plaintiffs have also named various parties as defendants, including, amongst others: Prime Minister, Justin Trudeau; Canada's Chief Public Health Officer, Theresa Tam; British Columbia's Provincial Health Officer, Dr. Bonnie Henry; Premier John Horgan; the Minister of Health, Adrian Dix; British Columbia Ferry Services Inc.; the Royal Canadian Mounted Police; and, the Canadian Broadcasting Corporation.
4. At page 85, paragraph 44, the Claim contains what the plaintiffs call the COVID-19 "Timeline". It does not begin in 2019 but rather it begins in 2000 with Bill Gates stepping down as CEO of Microsoft and creating the Gates Foundation. From there on it is not an exaggeration to say the Claim raises a host of conspiracy theories.
5. The Claim characterizes the COVID-19 pandemic as a "false pandemic" that was "designed and implemented for improper and ulterior purposes, at the behest of the WHO, controlled and directed by Billionaire, Corporate, and Organizational Global

Oligarchs” such as Bill Gates, in order to “install a New World (Economic) Order” (Part 1, paras. 155, 283(d)).

6. The Claim alleges the total number of COVID “cases” and “deaths” have been “hyper-inflated” and “distorted” (see page 180).
7. The plaintiffs allege there is a “global political, economic agenda behind the “unwarranted measures” taken by governments (see p. 188).
8. The Claim also makes numerous references to evidence or apparent evidence, including evidence that would likely be inadmissible at trial (for example, the results of public opinion polls; general opinions about organizations like WHO, etc.). The Claim is not just argumentative; it is entirely an argument.
9. The Claim complains about various government initiated measures, to address the COVID-19 pandemic.
10. For example, two plaintiffs allege they were unable to use the BC Ferry without wearing masks: see paras. 4 and 5. Some complain that their businesses (i.e. a salon and a restaurant) were forced to close for a period of time: see paras. 7 and 8.
11. Specifically relevant to these applicants, the plaintiff, Valerie Foley, complains that she was not permitted to remain on a Skytrain car without wearing a mask: para. 9.
12. In the Relief Sought, the plaintiff Foley claims this action breached her Charter rights under sections 7, 8, 9 and 10 of the Charter and she seeks \$2 Million in damages: para. 324 (h).
13. The Legal Basis portion of the Claim makes no direct reference to the defendants, TransLink or Kwok. Instead it makes a number of general allegations that masks are not effective (see paras. 343 (e), (h) and 352) and that “no police officer has the jurisdiction to apply the Trespass Act, to a person who declares a legal exemption to a mask and who enters a public place” (para. 361 (b)).

### Part 3: LEGAL BASIS

#### Application to Strike

1. Rule 9-5(1) 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,

...

- (d) It is otherwise an abuse of process of the court.

2. The plaintiffs' Claim is deficient in form and substance. It is a scandalous, frivolous, and vexatious pleading that fails to meet the basic requirements for pleadings and is an abuse of the Court's process. The Claim should be struck in accordance with Rule 9-5(1) of the *Supreme Court Civil Rules*, without leave to amend.

*Homalco Indian Band v. British Columbia*, [1998] B.C.J. No. 2703 (S.C.), para. 5  
*Mercantile Office Systems Private Ltd. v. Worldwide Warranty Life Services Inc.*,  
2021 BCCA 362, at para. 44.

3. A pleading may be struck under Rule 9-5(1) if it is plain and obvious that the pleading contravenes any of sub-rules 9-5(1)(a) through (d).

*Knight v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 17

4. Evidence is inadmissible on an application under Rule 9-5(1)(a) but may be considered on an application under the remaining paragraphs of Rule 9-5(1). The Applicants rely on subparagraphs 9-5(1)(a), (b), and (d).

5. On this application to strike the Claim, these applicants repeat and rely on the submissions made by the other applicants, including:

- Her Majesty the Queen in Right of British Columbia and the Provincial Defendants, as set out in their Notice of Application filed January 12, 2022;
- The Vancouver Island Health Authority and Providence Health Care, set out in their Notice of Application filed January 17, 2022; and,

- The Attorney General of Canada, RCMP and others, in their Notice of Application filed January 13, 2022.

**Rule 9-5(1)(a) – The Notice of Civil Claim Discloses No Reasonable Claim**

6. The plaintiffs are seeking declarations pertaining to questions of science, public health, and conspiracy theories that are not justiciable. Numerous examples can be found in the Claim including at paragraphs 291, 302, 307, 311 and 312.
7. As an example, the plaintiffs allege that the declared state of emergency by Premier John Horgan, and the measures implemented thereunder are: “Not based on any scientific or medical basis; and, are ineffective, false and extreme” (see para. 283 (c)).
8. The plaintiffs allege numerous violations (and non-violations) of the *Criminal Code* that are not properly raised in a civil lawsuit (*Simon v. Canada*, 2015 BCSC 924, para. 45).
9. The Claim alleges the COVID-pandemic “was pre-planned, and executed as a false pandemic through the WHO, by Billionaire, Corporate and Organizational Oligarchs the likes of Bill Gates, GAVI, the WHO and their former and current associates such as Theresa Tam and Bonnie Henry, the WEF, and others, in order to install a New World (Economic) Order...” (see para. 283 (d)). This was allegedly done for various reasons, including to “disguise a massive bank and corporate bail-out” and to “shift society in all aspects into a virtual world at the control of these vaccine, pharmaceutical, technological, globalized oligarchs, whereby the plaintiffs, and all others cannot organize nor congregate” (see para. 283,(d) (v)).
10. The plaintiffs allege numerous violations of international legal instruments, unwritten constitutional principles, and causes of action unknown to law that are not actionable in Canadian courts (*Li v. British Columbia*, 2021 BCCA 256, paras. 107-109, *Toronto v. Ontario*, 2021 SCC 34, para. 5).
11. The general rule that facts pleaded should be accepted as true for the purposes of a strike application does not apply in a “case like this where the notice of civil claim is replete with assumptions, speculation, and in some instances, outrageous allegations. The law is clear that allegations based on assumption and speculation will not be taken as true”.

*Willow v. Chong*, 2013 BCSC 1083, para. 19  
*Simon v. Canada*, 2015 BCSC 924, para. 54

12. Further, the court may take judicial notice of the existence of the COVID-19 virus.

*R. v. Find*, 2001 SCC 32 at para. 48  
*Khodeir v. Canada (Attorney General)*, 2022 FC 44, at paras. 20, 22-23, 62

13. The plaintiffs have failed to plead the *concise* statement of *material* facts that is necessary to support any complete cause of action. The *Charter* claims are inextricably bound up in a prolix, argumentative, and wildly speculative narrative of grand conspiracy that is incapable of supporting a viable cause of action. It is impossible to separate the material from the immaterial, the fabric of one potential cause of action or claim from another, or conjecture and conspiracy from asserted facts.

*Fowler v. Canada (Attorney General)*, 2012 BCSC 367, para. 54  
*Simon, supra*, paras. 54-59

14. It is plain and obvious that the Claim, as pleaded, fails to disclose a reasonable cause of action.

**Rule 9-5(1)(b) – The Notice of Civil Claim is Scandalous, Frivolous, and Vexatious**

**Scandalous and Embarrassing**

15. A pleading is scandalous if it does not state the real issue in an intelligible form and would require the parties to undertake useless expense to litigate matters irrelevant to the claim.

*Gill v. Canada*, 2013 BCSC 1703, para. 9

16. A claim is also scandalous or embarrassing if it is prolix, includes irrelevant facts, argument or evidence, such that it is nearly impossible for the defendant to reply to the pleading and know the case to meet. Pleadings that are so prolix and confusing that it is difficult, if not impossible, to understand the case to be met, should be struck.

*Gill, supra*, para. 9  
*Strata Plan LMS3259 v. Sze Hang Holding Inc.*, 2009 BCSC 473, at para. 36  
*Kuhn v. American Credit Indemnity Co.*, [1992] B.C.J. No. 953 (S.C.)

17. The Claim is a scandalous pleading because it is prolix and confusing, making it nearly impossible to respond to it.

Frivolous

18. A pleading is frivolous if it is without substance, is groundless, fanciful, 'trifles with the court' or wastes time.

*Borsato v. Basra*, [2000] B.C.J. No. 84, 43 C.P.C. (4<sup>th</sup>) 96 at para. 24

19. The Claim is a frivolous pleading because it advances conspiracy theories about the origins of the COVID-19 pandemic, the efficacy of COVID-19 measures, and the motivations of the defendants. Further, the underlying basis of the Claim is to question the science, since the government response to the pandemic is based on there actually being a disease called COVID-19 and it being a serious disease that has killed many people.
20. The plaintiffs' Claim is really a political, scientific and moral argument, not a legal argument. The plaintiffs are free to seek to advance their arguments with their political representatives, in scientific journals, or in the "court of public opinion" but the Claim does not raise legal issues, to be decided by a Court of Law.

**Rule 9-5(1)(a) and (d) – The Claim is Vexatious and an Abuse of Process**

21. Little distinction exists between a vexatious action and one that is an abuse of process as the two concepts have strikingly similar features.

*Dixon v. Stork Craft Manufacturing Inc.*, 2013 BCSC 1117

22. Abuse of process is not limited to cases where a claim or an issue has already been decided in other litigation, but is a flexible doctrine applied by the court to values fundamental to the court system. In *Toronto (City) v. Canadian Union of Public Employees, Local 79 (C.U.P.E.)*, [2003] 3 S.C.R. 77, the court stated at para. 37:

Canadian courts have applied the doctrine of abuse of process to preclude relitigation in circumstances where the strict requirements of issue estoppel (typically the privity/mutuality requirements) are not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality, and the integrity of the administration of justice.

23. Vexatious actions include those brought for an improper purpose, including harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights. Where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious.

*Lang Michener Lash Johnston v. Fabian*, [1987] O.J. No. 355, at para. 19

24. There are a multitude of bases upon which to conclude that the Claim is an abuse of process. These include the plaintiffs' attempt to use the judicial process to adjudicate conspiracy theories and seek declarations on non-justiciable questions of medical science and health policy.
25. The Applicants submit that the Claim has been brought for an improper purpose. To allow the Claim to proceed would not be a proper use of judicial resources and would harm the integrity of the administration of justice.
26. The plaintiffs and their counsel must know, or ought to know, that a 391-page Claim seeking over 200 declarations concerning alleged criminal conduct and the efficacy of health measures cannot succeed...[and] would lead to no possible good": *Lang Michener, supra*.
27. The Claim is also intended, at least in part, to consolidate, publicize, and amplify COVID-19 conspiracy theories and misinformation. The Claim is a book-length tirade against the entirety of Canada's and British Columbia's response to the pandemic.
28. Providing the plaintiffs with an opportunity to redraft their pleadings would only further this abuse of the Court's process.

**Part 4: MATERIAL TO BE RELIED ON**

The Applicant estimates that the application will take 1 day.

This matter is within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must, within the time for response to application described below,

- (a) file an Application Response in Form F32;
- (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 family law case; and,
- (c) serve on the applicant 2 copies, and on every other party 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, and
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: April 14, 2022



Signature of Timothy J. Delaney  
 counsel for the Applicants, Translink (sic) and Peter Kwok

**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: .....

Signature of  Judge  Master

**APPENDIX****THIS APPLICATION INVOLVES THE FOLLOWING:**

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discover
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts