



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, 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

(Application Pursuant to Rule 9-5 of the Supreme Court Civil Rules)

Name of Applicants: Her Majesty the Queen in right British Columbia (the "Province"); Dr. Bonnie Henry, Premier John Horgan, Minister of Health, Jennifer Whiteside, Minister of Education, Mike Farnworth, Minister of Public Safety and Solicitor General (collectively, the "Provincial Defendants")

To: The Plaintiffs

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TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia, at 10:00 am on February 3, 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. Costs.

Part 2: FACTUAL BASIS

1. On August 17, 2021, the Plaintiffs filed a 391-page Notice of Civil Claim (the "Claim") that attempts to challenge the scientific and legal basis for the entirety of British Columbia and Canada's response to the COVID-19 pandemic. Part 1 of the Claim contains over 1,300 paragraphs and sub-paragraphs.
2. In addition to Her Majesty the Queen in Right of the Province and the Attorney General of Canada, the Plaintiffs have also named as defendants: 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, and TransLink (British Columbia).
3. The Claim is a prolix and convoluted document that is replete with groundless accusations against public officials, inflammatory language, and conspiracy theories.
4. The Claim characterises 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).

Part 3: LEGAL BASIS

5. 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.

Pleadings Generally

6. Supreme Court Civil Rule (“Rule”) 3-1 provides, in part:

Contents of notice of civil claim

(2) A notice of civil claim must do the following:

- (a) set out a concise statement of the material facts giving rise to the claim;
- (b) set out the relief sought by the Plaintiff against each named defendant;
- (c) set out a concise summary of the legal basis for the relief sought;
- ...
- (g) otherwise comply with Rule 3-7. [emphasis added]

7. Rule 3-7 provides, in part:

Pleading must not contain evidence

(1) A pleading must not contain the evidence by which the facts alleged in it are to be proved.

...

Pleading conclusions of law

(9) Conclusions of law must not be pleaded unless the material facts supporting them are pleaded.

...

General damages must not be pleaded

(14) If general damages are claimed, the amount of the general damages claimed must not be stated in any pleading. ...

8. The function of pleadings is to clearly define the issues of fact and law to be determined by the court. The plaintiff must state, for each cause of action, the material facts. Material facts are those facts necessary for the purpose of formulating the cause of action. The defendant then sees the case to be met and may respond to the plaintiff’s allegations in such a way that the court will understand from the pleadings what issues of fact and law it will be called upon to decide.

Homalco Indian Band v. British Columbia, [1998] B.C.J. No. 2703 (S.C.), para. 5

9. As the Court of Appeal recently held in *Mercantile Office Systems Private Ltd. v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362, para 44:

None of a notice of claim, a response to civil claim, and a counterclaim is a story. Each pleading contemplates and requires a reasonably disciplined exercise that is governed, in many instances in mandatory terms, by the *Rules* and the relevant authorities. Each requires the drafting party to “concisely” set out the “material facts” that give rise to the claim or that relate to the matters raised by the claim. None of these pleadings are permitted to contain evidence or argument.

Application to Strike

8. 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 the process of the court ...

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

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

10. 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 Province relies on subparagraphs 9-5(1)(a)(b) and (d).

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

11. The Claim is premised upon non-justiciable questions and relies heavily upon international treaties, *Criminal Code* provisions, and unknown causes of action that are incapable of disclosing a reasonable cause of action for the purposes of Rule 9-5(1)(a).

12. For example, the Plaintiffs' petition the Court for declarations pertaining to questions of science, public health, and conspiracy theories that are not justiciable, including:

- a. "A Declaration that the science, and preponderance of the scientific world community, is of the consensus that: a) masks are completely ineffective in avoiding or preventing transmission of an airborne, respiratory virus such as SARS-CoV-2 which leads to COVID-19" (Part 2, para. 312(1));
- b. "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", and declaration of a bona fide pandemic, but for other political and socio-economic reasons, motives, and measures at the behest of global Billionaire, Corporate and Organizational Oligarchs" (Part 2, para. 302);
- c. "A Declaration that administrating medical treatment without informed consent constitutes experimental medical treatment" (Part 2, para. 321);
- d. "A Declaration that the unjustified, irrational, and arbitrary decisions of which businesses would remain open, and which would close, as being "essential", or not, was designed and implemented to favor mega-corporations and to de facto put most small businesses and activities out of business" (Part 2, para. 307); and

- e. “A Declaration that the measures of masking, social distancing, PCR testing, and lockdowns of schools in British Columbia, by the Respondents, are: a) not scientifically, or medically, based; b) based on a false, and fraudulent, use of the PCR test, using a threshold cycle of 43-45 cycles in that once used above the 35 threshold cycles, of all the positives it registers, 96.5%, are “false positives”, resulting in an accuracy rate, as a mere screening test, of 3.5% accuracy” (Part 2, para. 311).
13. The Plaintiffs allege numerous violations (and non-violations) of the *Criminal Code* that are not properly raised in a civil action (*Simon v. Canada*, 2015 BCSC 924, para. 45), including:
 - a. “Crime[s] against humanity under the Criminal Code of Canada” (Part 1, para. 299; Part 3, para. 333);
 - b. “Medical experimentation” that constitute “Criminal act[s] ... pursuant to the War Crime and Crimes against Humanity Act” (Part 2, para. 292(a));
 - c. “Criminal extortion” (Part 1, para. 261);
 - d. “The ‘extra’ suicides and drug over-doses undisputedly tied to Covid-measures constitutes criminal negligence causing death” (Part 1, para. 264);
 - e. “Criminal vaccine experiments causing horrific damage to innocent children in India, Pakistan, Africa and other developing countries” (Part 1, para. 211(a));
 - f. A Declaration that failure and/or refusal to comply with Provincial Covid Measures does not constitute a “common nuisance” contrary to s.180 of the Criminal Code or constitute “obstruct peace officer” contrary to s. 129 of the Criminal Code (Part 2, para. 323(f)).
 14. 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), including the following:
 - a. “Vaccine mandates violate ‘The Universal Declaration of Bioethics and Human Rights’, the Nuremberg Code, professional codes of ethics, and all provincial health Acts.” (Part 1, para. 260);
 - b. “Administering medical treatment without informed consent constitutes experimental medical treatment contrary to the Nuremberg Code and Helsinki Declaration of 1960” (Part 1, para. 299; Part 3, para. 333);
 - c. “Vesting an indefinite emergency power in [various defendants] constitutes constitutional violation of ‘dispensing with Parliament, under the pretense of Royal Prerogative’, contrary to the English Bill of Rights (1689) as read into our unwritten constitutional rights through the Pre-Amble of the Constitution Act, 1867” (Part 2, para. 295; Part 3, para. 336);
 - d. “The declared state of emergency, and measures implemented thereunder contravene” ... “the same parallel unwritten constitutional rights, enshrined through the Pre-Amble of the Constitution Act, 1867” (Part 1, para. 283(c)(iv));

- e. “[T]hat (solitary confinement) isolation/quarantine of asymptomatic children” violates the “*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Torture Convention”)*” and the *Convention on the Rights of the Child*” (Part 2, para. 311(e); and
- f. “The COVID Measures taken by both Trudeau, Horgan, Farnworth, Dix, Whiteside, and Henry, and their respective governments, ... constitute a constitutional violation of the abdication of the duty to govern” (Part 2, para. 296; Part 3, para. 326).
15. To the extent that the Claim attempts to plead causes of action that are known to law, such as breaches of *Charter* rights or the separation of powers, the Claim fails to set out material facts which, if true, support these claims.
16. 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 need not be taken as true.”
- Willow v. Chong*, 2013 BCSC 1083, para. 19
See, also, Simon v. Canada, 2015 BCSC 924, para. 54
17. 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
18. It is plain and obvious that the Claim, as pleaded, fails to disclose a reasonable cause of action.

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

Scandalous and Embarrassing

19. 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
20. 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.)

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

- a. The 391-page Claim attempts to plead dozens of causes of action and *Charter* breaches and seeks over 200 declarations. It is, as a result, nearly impossible to know the case to be met.
- b. The Claim contains extensive passages of completely irrelevant information, including:
 - i. A COVID-19 timeline beginning in 2000 with Bill Gates stepping down as Microsoft CEO (Part 1, para 44) and including such other events as Bill Gates pledging \$10 billion in funding in 2010 for the World Health Organization and announcing the “Decade of Vaccines” (Part 1, para. 50);
 - ii. A lengthy narrative describing an alleged “global political agenda behind [the] unwarranted measures” (Part 1, paras. 207-300);
 - iii. A detailed 81-page narrative about the individual Plaintiffs dealings with government employees, health care professionals, and police officers (Part 1, pages 1-81).
- c. The Claim relies extensively on the *Criminal Code of Canada* (Part 1, paras. 11(b)(h), 115, 141(h), 207(l), 299; Part 2 para. 291, Part 3 paras. 322(k)(iv), 323(f), 333, 361(f)(k)(iv));
- d. The Claim contains lengthy and convoluted legal arguments (i.e., Part 1 page 108 para. 141; Part 2, paras. 286, 324, 358);
- a. The Claim raises allegations against individuals and entities who are not named as parties such as Bill Gates (Part 1, paras. 216-222), Facebook, Amazon, Google, Yahoo (Part 1, paras. 174, 216), Doug Ford (Part 1, para. 152(c)), and others.

22. The Claim is also a scandalous pleading because it fails to meet the basic requirements for pleadings under the *Rules*.

- a. The Claim contains over 1600 paragraphs and subparagraphs. It fails to set out a concise statement of the material facts, relief sought, and legal basis in violation of Rules 3-1(1)-(3);
- b. The Claim pleads evidence in contravention of Rule 3-7(1), including dozens of lengthy quotations from various COVID-19 commentators and activists and hundreds of footnotes to miscellaneous websites, articles, policy documents, and articles;
- c. The Claim pleads conclusions of law, unsupported by facts, in contravention of Rule 3-7(9);
- d. The Claim appears to plead amounts of damages in contravention of Rule 3-7(14).

Frivolous

23. 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. (4th) 96, at para 24

24. The Claim is a frivolous pleading because it promotes fanciful conspiracy theories about the origins of the COVID-19 pandemic, the efficacy of COVID-19 measures, and the motivations of the Provincial Defendants. These allegations include, by way of example only:

- a. “The Plaintiffs state, and the fact is, that the illegal actions, and decrees issued by The Defendants and other public officials were done, in abuse and excess of their offices, knowingly to propagate a groundless and falsely-declared ‘pandemic’ ... designed and implemented for improper and ulterior purposes, at the behest of the WHO, controlled and directed by Billionaire, Corporate, and Organizational Global Oligarchs.” (Part 1, para. 155);
- b. “The Plaintiffs state, and the fact is, that the non-medical aims and objectives to declare the “pandemic”, for something it is not beyond one of many annual seasonal viral respiratory illnesses, was to, inter alia, effect the following non-medical agendas, by using the COVID- 19 [*sic*] as a cover and a pretext: (a) To effect a massive bank and stock market bail-out needed because the banking system was poised to again collapse since the last collapse of 2008 in that the World debt had gone from \$147 Trillion dollars in 2008 to \$321 Trillion dollars in January, 2020” (Part 1, para 208(a));
- c. “The fact is that the pandemic pretense is there to establish a “new normal”, of a New (Economic) World Order, with a concurrent neutering of the Democratic and Judicial institutions and an increase and dominance of the police state; (c) A massive and concentrated push for mandatory vaccines of every human on the planet earth with concurrent electronic surveillance by means of proposed: (i) Vaccine “chips”, bracelets”, and “immunity passports”; (ii) Contract- tracing via cell-phones; (iii) Surveillance with the increased 5G capacity; (d) The elimination of cash- currency and the installation of strictly digital currency to better-effect surveillance.” (Part 1, para. 208(b)-(d)); and
- d. “The Plaintiffs state that, and fact is, this global vaccination scheme which is being propelled and pushed by the Defendants, is with the concurrent aim of total and absolute surveillance of the Plaintiffs and all citizens.” (Part 1, para. 308)

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

25. 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

26. 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.

27. Vexatious actions include those brought for an improper purpose, including the 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

28. 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 public health policy.
29. More concerning, the Claim bears the hallmarks of a vexatious and abusive claim that is intended to harass and oppress the parties (and non-parties):
- a. The Claim advances against the Defendant Provincial Health Officer, without factual foundation, spurious allegations of "crimes against humanity" in relation to the implementation of COVID-19 measures and international public health work in the early 2000s (Part 1, para. 293);
 - b. The Claim advances irrelevant allegations about alleged conflicts of interests or hypocritical conduct relating to the private lives of both parties and non-parties (Part 1 para 8(k), 44, 154(c)-(f), 155, 207(b), 298);
 - c. The Plaintiffs make broad, sweeping criminal allegations against a large number of named and unnamed government employees and officials (Part 1, para 11, 141(h), 151(d), 261 (pg. 234) 264 (pg. 235) 300(d));
 - d. The Claim uses inflammatory and inappropriate language to describe alleged actions of Defendants and public officials such as "egregious crimes against humanity", (Part 1 para. 290) "fraudulent" (Part 1 para. 251), or "Stalinist censorship" (Part 1 para. 280 (pg. 308), or to suggest that politicians or officials have "no clue" (Part 1 para. 154), are "wholly unqualified" (Part 1 para. 154) or are "outright lying" (Part 1 para. 279 (pg. 240)).
30. The Province submits the Claim has been brought for an improper purpose.
31. 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 public health measures "cannot succeed ... [and] would lead to no possible good": *Lang Michener, supra*.
32. The Claim is intended, at least in part, to intimidate and harass public officials and politicians, including the Provincial Health Officer, by advancing spurious, public allegations of criminal conduct, conflicts of interest, and ulterior motives. This intention is further corroborated by the Plaintiff Action4Canada's simultaneous campaign to

encourage individuals to serve government officials and politicians with “Notices of Liability” for their actions in responding to the COVID-19 pandemic (Affidavit #1 of Rebecca Hill, Ex. G, I).

33. 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 British Columbia’s respond to the pandemic, with dozens of quotes from, and hundreds of footnotes to, anti-mask, anti-lockdown, and anti-vaccine resources. Both Action4Canada and its counsel have promoted the Claim online and on social media (Affidavit #1 of Rebecca Hill, Ex. D, K).
34. These are improper purposes to file and prosecute a civil action. There can be no question that the Claim is an abuse of process. Permitting this litigation to proceed would violate the principles of judicial economy and the integrity of the administration of justice.
35. 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

1. Affidavit #1 of Rebecca Hill, made on January 10, 2022.

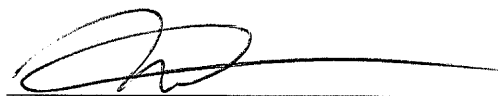
The Applicant estimates that the application will take 1 day.

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: January 11, 2022



Signature of lawyer for the applicant
Mark Witten

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 discovery
- 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

This **NOTICE OF APPLICATION** is prepared by **Mark Witten**, Barrister & Solicitor, of the Ministry of Attorney General, whose place of business and address for service is 1301 - 865 Hornby Street, Vancouver, British Columbia, V6Z 2G3; Telephone: (604) 660-5476; Facsimile: (604) 660-6797

