

Court File No.: CV-22-00683933-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ROCCO GALATI

Plaintiff

- and -

SHARON GREENE, THE DIRECTOR OF INTAKE AND RESOLUTION, THE LAW
SOCIETY OF ONTARIO (“LSO”)

Defendants

RESPONDING (PLAINTIFF’S) FACTUM
(Response to Motion to Strike)

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FACTUM

PART I - OVERVIEW

1. The Plaintiffs rely on the facts as set out in the statement of claim, which, for the purposes of this motion, are required to be taken as proven¹.
2. The Plaintiffs further state, as global observations and submissions, that the Defendants:
 - (a) while such concerns and objections may, or may not, form the proper basis for a request for particulars, within the context of this motion, all “facts”, pleaded as “facts”, must be taken as proven “facts”, in accordance with the above-noted jurisprudence; and
 - (b) The Defendants, in engaging in mischaracterizing the pleadings into what the Defendants say they mean, fly in the face of the clear holding of the Court of Appeal in *Arsenault* wherein the court ruled:

10 In my view, for the purposes of Rule 221(1) of the *Federal Courts Rules*, SOR/98-10, the moving party must take the opposing party’s pleadings as they find them, and cannot resort to reading into a claim something which is not there. The Crown cannot, by its construction of the respondents’ claim, make it say something which it does not say.

¹ *A.G. Canada v. Inuit Tapirsat of Canada* [1980] 2 S.C.R. 735; *Nelles v. Ontario* (1989) 60 DLR (4th) 609 (SCC); *Operation Dismantle Inc. v. The Queen* [1985] 1 S.C.R. 441; *Hunt v. Carey Canada Inc* [1990] 2 S.C.R. 959; *Dumont v. A.G. Canada* [1990] 1 S.C.R. 279; *Trendsetter Ltd. v. Ottawa Financial Corp.* (1989)32 O.A.C. 327 (C.A.); *Nash v. Ontario* (1995) 27 O.R. (3d) 1 (Ont. C. A.). *Canada v. Arsenault* 2009 FCA 242; *B.C. v. Imperial Tobacco Canada Ltd.*, [2005] 2 S.C.R. 473

PART II - THE FACTS

3. The Plaintiff, Rocco Galati, is a senior lawyer, practicing in Toronto, Ontario, who has been practicing law since he was called to the bar in Ontario in 1989. The Plaintiff practices law through his law firm, Rocco Galati Law Firm Professional Corporation, duly incorporated under the laws of Ontario and the requirements of the *Law Society Act*.
4. The Plaintiff is a highly regarded and prominent lawyer. He has been a Member of Canadian Who's Who (since 2011). In 2014 and 2015 he was named one of the Top 25 Influential Lawyers by Canadian Lawyer Magazine. In 2015 he was awarded the OBA (Ontario Bar Association) President's Award. He was in fact the first lawyer to receive the award, with previous Presidents' Awards having been bestowed on judges and two (2) advocacy groups.
5. Between May 2015 and May 2019, he served as an elected benchler for the Law Society of Ontario (LSO). Between May 2015 to February 2021, he also served as a Hearing Panel Member (Adjudicator) of the Ontario Law Society Tribunal (LST).
6. The Plaintiff has litigated, regularly, at all level Courts, including Tax Court, Federal Court, Federal Court of Appeal, all levels of Ontario Courts, other Provincial Superior Courts, as well as the Supreme Court of Canada. He has litigated in several provinces including Ontario, British Columbia, Alberta, Manitoba, and Quebec. He has, as counsel, over 500 reported cases in the jurisprudence. Some of his major cases include: *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817, *Reference re Supreme Court Act, R.S.C. 1985 (Canada)* ("Nadon Reference"), *Reference re Section 98 of the Constitution Act, 1867, R. v. Ahmad*,

[2011] S.C.J. No. 6 (Toronto 18 Terrorism Case); *Felipa v. Canada*, [2011] F.C.J. No. 135, *Wang v. Canada*, 2018 ONCA 798.

7. The Plaintiff has been asked to speak and has spoken, regularly, at various Law and other Conferences, as well as Law Schools, Universities and High Schools, across Canada from 1999 to present.
8. The Plaintiff is the founder and Executive Director of Constitutional Rights Centre Inc. since its inception in November, 2004.
9. The Plaintiff has co-authored two books, namely: “*Criminal Lawyer’s Guide to Immigration and Citizenship Law*” (1996), “*The Power of the Wheel: The Falun Gong Revolution*” (2001). He has also produced three Films, “*Two Letters & Counting...*” 2008-2011, written, directed and performed by multi-Genie Award winning Tony Nardi, on the state of art and culture in Canada.
 - **The Nature of the Plaintiff’s Legal Practice.**
10. The Plaintiff started his career (1987-1990) with the Department of Justice and since then, to the present, has been engaged in private practice mostly restricting his practice to proceedings against the Crown.
11. During the course of his career, in defending constitutional rights, the Plaintiff has had to withstand the relentless personal attacks, and several viable death threats, from racists, anti-Semites, and extremists who took issue with his Calabrian, Jewish heritage and/or his clients, labelling his clients, and the Plaintiff, as "mobsters", "terrorists" or "anti-vaxxers".

- **Plaintiff's history with the Law Society Pre-Covid-19**

12. Throughout the Plaintiff's legal career, especially to and including March 11th, 2020, the declared start of the COVID-pandemic, the Plaintiff has been the subject of racially-based, abusive and frivolous complaints from government departments against whom he litigates, self-generated LSO complaints based on newspaper and other media posts, as well as the racist/anti-Semite prone members of the public of large with nothing better to do than grind their racist axe. **None** of any of these numerous complaints, over the 34 plus years of the Plaintiff's practice, were **ever** referred to any disciplinary hearing.
13. The Plaintiff states that, as a Calabrian with Jewish ancestry, he is a member of historically discriminated group(s) in Canada, including the interment of Italo-Canadians in World War II as well as the long-standing and pervasive depiction of Italians as criminals and "mobsters". The Plaintiff has also been, personally, the victim, throughout his years, including his teenage years, of racially-based violence on the part of racist Canadians at large, including police officers. He has also faced pervasive discrimination within the legal profession.
14. The Plaintiff has never been charged nor convicted of any criminal offence nor been found to have ever committed any breach of the *Rules of Professional Conduct* of the Law Society.

- **Plaintiff's history with the Law Society Post-Covid-19**

15. Since the declaration of the COVID-19 pandemic, on March 11th, 2020, the Plaintiff and his junior lawyer have been the subject of no less than nine (9) baseless and abusive LSO complaints, some of them with racist over-tones and undertones, with respect to their roles as counsel on cases litigating COVID-19 measures imposed by Provincial and Federal governments.
16. Of those nine complaints, eight were dismissed. However, the LSO required the Plaintiff to respond to three (3), Alexandra Moore, "Lindsay H", and Donna Toews, of these complaints.
17. The complaints made were chronologically made as follows:
 - (i) December 2020, complaint from "Lindsay H.", through Intake and Resolution Counsel, Samantha Nassar;
 - (ii) February 18, 2021, complaint from Terry Polevoy, (a Defendant in a defamation case in which Galati represented the Plaintiff in that action), through Intake and Resolution counsel, Samantha Nassar;
 - (iii) February 18th, 2021, complaint from Alexandra Moore (a defendant in the within defamation case) against my junior lawyer, Samantha Coomara, through Intake and Resolution Counsel, Samantha Nassar;
 - (iv) February 22, 2021, complaint from Elana Goldfried, through Intake and Resolution counsel, Samantha Nassar;
 - (v) August 3, 2021, complaint from Alexandra Moore (a defendant in the within defamation case) through Intake and Resolution Counsel, Miko Dubiansky;

- (vi) November 25th, 2021, a further complaint of Alexandra Moore, through Intake and Resolutions Counsel, Miko Dubiansky;
- (vii) February 4, 2022 complaint of Terry Polevoy (a Defendant in a defamation case in which Galati represented the Plaintiff in that action) through Intake and Resolution counsel, Sharon Greene;
- (viii) February 4, 2022, two complaints from Franca Lombardi, through Intake and Resolution counsel, Miko Dubiansky;
- (ix) May 19th, 2022 complaint by Donna Toews through Intake and Resolutions counsel, Sharon Greene.

18. After the second complaint, from Alexandra Moore, the Plaintiff wrote to the Law Society on September 21, 2021, and stated as follows:

The other thing I cannot fathom is the Law Society of Ontario's approach and conduct in forwarding this to me for response at all. Ms. Nassar was on the previous Moore complaints. There seems to have been absolutely no minimal review of them, nor Ms. Moore's website, to glean what Canuck Law and Ms. Moore are about with respect to me and my clients.

In my last correspondence, on a similarly outrageous complaint, by an outrageous individual, with respect to an attempt to censor my speech, I indicated that the next time I received one of these, I would commence action against the LSO, in the absence of an apology.

If I do not receive an apology from the LSO on this "Complaint" which should not even have reached me, if the minimum of research was done on Ms. Moore and her website, I will commence action against the LSO for negligent investigation and the newly-created tort of (online) harassment because, it seems to me, that the LSO is more than content and willing to be dupe and conduit for Ms. Moore's and Canuck Law's filth, anti-Semitic, racists, and derogatory harassment of me and my clients.

19. On May 19th, 2022, the Plaintiff received yet another ridiculous, baseless, and unfounded complaint by a non-client, whom the Plaintiff has never met, does not know, nor ever communicated with, namely a Ms. Donna Toews.

20. The Plaintiff, under threat of the powers in s. 49.3 of the *Law Society Act*, was required to respond to this complaint, without any particulars whatsoever, but simply the misplaced assumption of the Defendant, Sharon Greene, to which the Plaintiff responded, as attached to the statement of claim attached as “Schedule A”, of the Statement of Claim in the within action.

- Plaintiff’s Responding Motion Record, at Tab 1, at pp. 034 to 049.

21. Following receipt of this complaint, the Plaintiff on June 28th, 2022 executed an action against the complainant, Donna Toews, and her Co-conspirators, and on July 12th, 2022 the claim issued in CV-22-00683322-0000.

- Plaintiff’s Responding Motion Record, at Tab 1, at pp. 050 to 074; Tab 6 at pp. 215 to 243.

22. On June 28th, 2022 the Plaintiff participated, as legal counsel for a lawyer undergoing LSO investigation for issues arising from the lawyer's free speech as a private citizen. The lawyer was interviewed by two Law Society investigators one being Jill Cross. During that interview Jill Cross became acrimonious with the legal counsel, the Plaintiff, over objectionable questions, assumptions, and attempts to put words and attribute non-existent conduct to the lawyer being interviewed and investigated.

23. Following the Plaintiff’s response to the complaint, dated June 29th, 2022, to the Law Society of Ontario, the Defendant(s), Sharon Greene, and the Law Society of Ontario, continued to pursue the abusive and baseless complaint with the Plaintiff.

- Plaintiff’s Responding Motion Record, Affidavit of Alexander Borne, “Exhibit K” at Tab 7(k), at pp. 405 to 420.

24. On July 12th, 2022 the Plaintiff took and issued the within action against the Law Society Defendants, in the within action.

- Plaintiff's Responding Motion Record, at Tab 1

25. Less than four weeks from the issuance of this claim against the LSO, on August 10th, 2022, Jill Cross, forwarded yet another complaint against the Plaintiff, arising from a political speech the Plaintiff gave, at Nathan Phillips Square, in November, 2021. This complaint was on the content of his purported speech. This complaint did not emanate with respect to Covid-19 measures, from a client or member of the public, but from the Law Society itself, without disclosing who at the Law Society initiated it. The Plaintiff requested clarification of the complaint and further objected to Jill Cross spear-heading the investigation given their interaction of June 28th, 2022, and further given the same very contextual nature, namely free speech of a private citizen.
26. On September 12, 2022, the Law Society transferred the complaint as overseen by Sharon Greene, to a different investigator. This new investigator notified the complainant, Donna Toews, a copy of which went to the Plaintiff, that given the action commenced against Toews, et al, that the Toews complaint would not be dealt at this time until the outcome of the action in Superior Court, at which time it would be exhumed and taken up again. This notwithstanding that the Plaintiff, Rocco Galati, had fully responded to the complaint.
27. On October 24th, 2022, after refusing an amended statement of claim on October 11th, 2022, the Plaintiff wrote counsel for the LSO, for consent to amend his pleading to add Jill Cross as a Defendant, which consent is required under the **Rules**, but other amendments do not

require consent before close of pleadings. The LSO counsel refused consent to add Jill Cross as a Defendant.

- Plaintiff's Responding Motion Record, at Tab 3, at pp. 154 to 155; Tab 4 at pp. 158-159.

28. The Amended Statement of Claim, sent October 11th, 2022, was before the Civil Practice Court Endorsement.

- Plaintiff's Responding Motion Record, at Tab 5

29. On November 9th, 2022, the Plaintiff, as was his right under the *Rules*, amended the claim **without** adding Jill Cross as a Defendant, which amended claim was filed by the Court.

- Plaintiff's Responding Motion Record, at Tab 6, at pp. 166 to 245.

30. The Relief sought by the plaintiff is set out in paragraphs 1(a)(b) and (c);59-77 of his amended statement of claim and, in summary is in:

- (a) Conspiracy;
- (b) Abuse of process (misfeasance of public office);
- (c) Interference with economic interests;
- (d) Breach of fiduciary duty;
- (e) Negligence;
- (f) Intimidation;
- (g) A constitutional challenge to any purported immunity granted by s.9 of the *Law Society Act*;
- (h) a violation of the plaintiffs s.7, 8, and 15 *Charter* rights;
- (i) A constitutional challenge to s. 49.3 of the *Law Society Act*; and

(j) Monetary damages.

PART III - THE ISSUES LAW AND ARGUMENT

31. Whether any portion of the statement of claim should be struck?
32. If any of the statement of claim is struck, whether it should be struck without prejudice, with leave to the Plaintiffs to amend?

A/ Motion to Strike – The Jurisprudence – General Principles

33. It is submitted and tritely held, by the Supreme Court of Canada, and the Appellate Courts, that:

- (a) the facts pleaded by the Plaintiffs must be taken as proven and fact:²
- (b) it has been further held, that on a motion to strike, the test is a rather high one, namely that,

“A Court should strike a pleading under Rule 126 *only in plain and obvious cases where the pleading is bad beyond argument.*

Furthermore, I am of the view that the rules of civil procedure should not act as obstacles to a just and expeditious resolution of a case. Rule 1.04(1) of the Rules of Civil Procedure in Ontario, O. Reg 560/84, confirms this principle in stating that “these rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.”

- Nelles, supra, p. 627

and rephrased, re-iterated by the Supreme Court of Canada, in *Dumont*, wherein the Court stated that,

“It cannot be said that the outcome of the case is ‘plain and obvious’ or ‘beyond doubt’.

² *A.G. Canada v. Inuit Tapiratsat of Canada* [1980] 2 S.C.R. 735; *Nelles v. Ontario* (1989) 60 DLR (4th) 609 (SCC); *Operation Dismantle Inc. v. The Queen* [1985] 1 S.C.R. 441; *Hunt v. Carey Canada Inc* [1990] 2 S.C.R. 959; *Dumont v. A.G. Canada* [1990] 1 S.C.R. 279; *Trendsetter Ltd. v. Ottawa Financial Corp.* (1989) 32 O.A.C. 327 (C.A.); *Nash v. Ontario* (1995) 27 O.R. (3d) 1 (Ont. C. A.); *Canada v. Arsenault* 2009 FCA 242; *B.C. v. Imperial Tobacco Canada Ltd.*, [2005] 2 S.C.R. 473

Issues as to the proper interpretation of relevant provisions...and the effect...upon them would appear to be better determined at trial where a proper factual base can be laid.”

- *Dumont, supra*. p. 280

and further, that:

“It is not for this Court on a motion to strike to reach a decision as to the Plaintiff’s chance of success.”

- *Hunt, supra (SCC)*

and further that:

The fact that a pleading reveals “an arguable, difficult or important point of law” cannot justify striking out part of the statement of claim. Indeed, I would go so far as to suggest that where a statement of claim reveals a difficult and important point of law, it may well be critical that the action be allowed to proceed. Only in this way can we be sure that the common law in general, and the law of torts in particular, will continue to evolve to meet the legal challenges that arise in our modern industrial society.

...

This brings me to the second difficulty I have with the defendants’ submission. **It seems to me totally inappropriate on a motion to strike out a statement of claim to get into the question whether the Plaintiff’s allegations concerning other nominate torts will be successful. This a matter that should be considered at trial where evidence with respect to the other torts can be led and where a fully informed decision about the applicability of the tort of conspiracy can be made in light of that evidence and the submissions of counsel.** If the Plaintiff is successful with respect to the other nominate torts, then the trial judge can consider the defendants’ arguments about the unavailability of the tort of conspiracy. If the Plaintiff is unsuccessful with respect to the other nominate torts, then the trial judge can consider whether he might still succeed in conspiracy. Regardless of the outcome, it seems to me inappropriate at this stage in the proceedings to reach a conclusion about the validity of the defendants’ claims about merger. I believe that this matter is also properly left for the consideration of the trial judge.

- *Hunt, supra* p. 14

and further that:

[21] Valuable as it is, the Motion to Strike **is a tool that must be used with care.** The Law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed. Before *Donoghue v. Stevenson*, [1932] A.C. 562 (H.L.) introduced a general duty of care to one's neighbour premised on foreseeability, few would have predicted that, absent a contractual relationship, a bottling company could be held liable for physical injury and emotional trauma resulting from a snail in a bottle of ginger beer. Before *Hedly Byrne & Co. v. Heller & Partners, Ltd.*, [1963] 2 All E.R. 575 (H.L.), a tort action for negligent misstatement would have been regarded as incapable of success. The history of our law reveals that often new developments in the law first surface on motions to strike or similar preliminary motions, like that one at issue in *Donoghue v. Stevenson*. therefore, on a Motion to Strike, it is not determinative that the law has not yet recognized the particular claim. **The Court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial.**

- *R. v. Imperial Tobacco Canada Ltd.*, *supra* at para 21.

and that “the court should make an order only in *plain and obvious cases* which it is satisfied to be beyond doubt”;

- *Trendsetter Ltd.*, *supra*, (Ont. C.A.).

(c) (i) and that a statement of claim should not be struck just because it is “novel”;

- *Nash v. Ontario* (1995) 27 O.R. (3d) (C.A.)
- *Hanson v. Bank of Nova Scotia* (1994) 19 O.R. (3d) 142 (C.A.)
- *Adams-Smith v. Christian Horizons* (1997) 14 C.P.C. (4th) 78 (Ont. Gen. Div.)
- *Miller (Litigation Guardian of) v. Wiwchairyk* (1997) 34 O.R. (3d) 640 (Ont. Gen. Div)

(ii) that “matters law not *fully settled* by the jurisprudence should not be disposed of at this stage of the proceedings”;

- *R.D. Belanger & Associates Ltd. v. Stadium Corp. of Ontario Ltd.* (1991) 5 O.R. (3d) 778 (C.A.)

(iii) and that to strike, the Defendants must produce a “decided case *directly on point* from the same jurisdiction demonstrating that the very same issue has been *squarely dealt with and rejected*”;

- *Dalex Co. v. Schawartz Levitsky Feldman* (1994) 19 O.R. (3d) 463 (Gen. Div).

(d) and that, in fact, the Court ought to be generous in the drafting of pleadings and not strike but allow amendment before striking.

- *Grant v. Cormier – Grant, et. al* (2001) 56 O.R. (3d) 215 (Ont. C.A.)
- *TD Bank v. Deloitte Hoskins & Sells* (1991) 5 O.R. (3d) 417 (Gen. Div.)

B/ The Constitutional Right to Judicial Review and Declaratory Relief

34. The Plaintiffs submit that Declaratory relief goes to the crux of the constitutional right to judicial review, which right the Supreme Court of Canada has re-affirmed in *Dunsmuir*:

31 The legislative branch of government cannot remove the judiciary's power to review actions and decisions of administrative bodies for compliance with the constitutional capacities of the government. Even a privative clause, which provides a strong indication of legislative intent, cannot be determinative in this respect (*Executors of the Woodward Estate v. Minister of Finance*, [1973] S.C.R. 120, at p. 127 [page213]). The inherent power of superior courts to review administrative action and ensure that it does not exceed its jurisdiction stems from the judicature provisions in ss. 96 to 101 of the *Constitution Act, 1867: Crevier*. As noted by Beetz J. in *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048, at p. 1090, “[t]he role of the superior courts in maintaining the rule of law is so important that it is given constitutional protection”. *In short, judicial review is constitutionally guaranteed in Canada*, particularly with regard to the definition and enforcement of jurisdictional limits....

- *Dunsmuir v. New Brunswick, 2008 SCC 9, at Paragraph 31*

35. Federal Court, in *Singh v. Canada (Citizenship and Immigration)*, 2010 FC 757, re-affirmed the ample and broad right to seek declaratory relief, in quoting the Supreme Court of Canada in *Solosky*:

Declaratory relief is a remedy **neither constrained by form nor bounded by substantive content**, which avails persons sharing a legal relationship, in respect of which a “real issue” concerning the relative interests of each has been raised and falls to be determined.

- *Singh v. Canada (Citizenship and Immigration)*, 2010 FC 757, @ p. 830

36. More recently, the Supreme Court of Canada, in the *Manitoba Metis* case reaffirmed the breadth of the right to declaratory relief to rule that it cannot be statute-barred:

[134] This Court has held that although claims for personal remedies flowing from the striking down of an unconstitutional statute are barred by the running of a limitation period, courts retain the power to rule on the constitutionality of the underlying statute: *Kingstreet Investments Ltd. v. New Brunswick (Finance)*, 2007 SCC 1, [2007] 1 S.C.R. 3; *Ravndahl v. Saskatchewan*, 2009 SCC 7, [2009] 1 S.C.R. 181. ***The constitutionality of legislation has always been a justiciable question: Thorson v. Attorney General of Canada***, [1975] 1 S.C.R. 138, at p. 151. ***The “right of the citizenry to constitutional behaviour by Parliament” can be vindicated by a declaration that legislation is invalid, or that a public act is ultra vires: Canadian Bar Assn. v. British Columbia***, 2006 BCSC 1342, 59 B.C.L.R. (4th) 38, at paras. 23 and 91, citing *Thorson*, at p. 163 (emphasis added). **An “issue [that is] constitutional is always justiciable”**: *Waddell v. Schreyer* (1981), 126 D.L.R. (3d) 431 (B.C.S.C.), at p. 437, aff’d (1982), 142 D.L.R. (3d) 177 (B.C.C.A.), leave to appeal refused [1982] 2 S.C.R. vii (*sub nom. Foothills Pipe Lines (Yukon) Ltd. v. Waddell*).

...

[140] ***The courts are the guardians of the Constitution and, as in Ravndahl and Kingstreet, cannot be barred by mere statutes from issuing a declaration on a fundamental constitutional matter. The principles of legality, constitutionality and the rule of law demand no less: see Reference re Secession of Quebec***, [1998] 2 S.C.R. 217, at para. 72.

...

[143] ***Furthermore, the remedy available under this analysis is of a limited nature. A declaration is a narrow remedy. It is available without a cause of action, and courts make declarations whether or not any consequential relief is available.*** As argued by the intervener Assembly of First Nations, it is not awarded against the defendant in the same sense as coercive relief: factum, at

para. 29, citing *Cheslatta Carrier Nation v. British Columbia*, 2000 BCCA 539, 193 D.L.R. (4th) 344, at paras. 11-16.

- ***Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14**

37. It has been long-stated, by the Supreme Court of Canada that “The constitutionality of legislation has always been a justiciable issue”:

The question of the constitutionality of legislation has in this country always been a justiciable question. Any attempt by Parliament or a Legislature to fix conditions precedent, as by way of requiring consent of some public officer or authority, to the determination of an issue of constitutionality of legislation cannot foreclose the Courts merely because the conditions remain unsatisfied: *Electrical Development Co. of Ontario v. Attorney General of Ontario*[18], *B.C. Power Corp. Ltd. v. B.C. Electric Co.*

- ***Thorson v. AG of Canada [1975] 1 SCR 138, @ p. 151***
- ***Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, @ paragraph 134**

C/The Amended Statement of Claim

38. It is submitted that the Plaintiff, under the ***Rules***, had a right to file an amended statement of claim notwithstanding the bare bones notice which had been served, by the Defendant as the motion date had not been scheduled, nor set until 2023, and the amended claim, being served on the Defendants on October 11th, 2022, was prior to the Practice Court order setting down a schedule for exchange and filing of materials.

- **Plaintiff's Record, at Tab 5**

The applicable **Rule** reads:

26.02 A party may amend the party's pleading,

- (a) **without leave, before the close of pleadings, if the amendment does not include or necessitate the addition, deletion or substitution of a party to the action;**
- (b) on filing the consent of all parties and, where a person is to be added or substituted as a party, the person's consent; or
- (c) with leave of the court.

D/Response to Defendants' Factum

39. It is submitted that, when taken as proven, the facts pleaded in the (amended) statement of claim plead sufficient material facts, as well as facts of bad faith/*mala fides*, and the constituent elements for the tortious conduct, and **Charter** violations, for the matter to proceed to trial.

- Plaintiff's Responding Motion Record, at Tab 6, at pp. 166 to 243

- ***Statutory immunity***

40. It is submitted that, above and beyond of the statutory exception to statutory immunity contained in s.9 of the **Law Society Act**, of bad faith/**mala fides**, the Plaintiff has brought a constitutional challenge to s.9, and has the right to seek a declaration as to its constitutional validity at, or before trial:

- ***Thorson v. AG of Canada [1975] 1 SCR 138,***
- ***Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14***
- ***Singh v. MEI [1985] S.C.R. 177 (SCC)***
- ***Canada v. Solosky, [1980] 1 S.C.R. 821***

- ***Conspiracy***

41. With respect to paragraphs 41 - 44 of the Defendants' factum, the Plaintiff states that he has properly pled two overlapping conspiracies against the Defendants, the first as Co-conspirators to the one initiated by the complainants, and the second by the LSO Defendants as retaliation, and in their own conspiratorial right.

- **Plaintiff's Responding Motion Record, at Tab 6, at pp. 25A; 58B; 58C; 59-66.**

- ***Abuse of process/Authority***

42. With respect to paragraphs 45-49 of the Defendants' factum, the Plaintiff states that the tort of abuse of process has been properly pled, and furthermore, that the material facts further make out a tort of abuse of authority/misfeasance of public office, and highlighted by the facts of bad faith/*mala fides*:

- **Plaintiff's Responding Motion Record, at Tab 6, at pp.25A; 58B; 58C; 59-66; 67-68**
- *Roncarelli v. Duplessis, {1959} S.C.R. 121*
- *Odhavji Estate v. Woodhouse {2003} 3 S.C.R. 263, 2003 SCC 69*

- ***Interference with Economic Interest(s)***

43. With respect to paragraphs 50 – 53 of the Defendants' factum, the Plaintiff likewise states that this tort, both in fact, and in law, has been properly pled and the fact that the Plaintiff has to report all these complaints to his clients, when **none** of his clients were **ever** the complainants, aggravates the Defendant's interference with his practice and economic interests therein.

- **Plaintiff's Responding Motion Record, at Tab 6, at pp.25A; 58B; 58C; 59-66; 67-68**

- ***Breach of Fiduciary Duty***

44. With respect to paragraphs 54 – 62 of the Defendants’ factum the Plaintiff states that such duty does, or potentially arises, especially in the case where there is **NO** client complaint, that the duty to protect the “public interest” also includes the duty to prevent, and to **not** give countenance to racist, anti-semitic complaints, which undermines the administration of justice, and confidence in the legal profession, and the Rule of Law.

- **Plaintiff’s Responding Motion Record, at Tab 6, at pp. 69**

- ***Negligence and Intimidation***

45. With respect to paragraphs 63 – 66, and paragraphs 67 – 70 of the Defendants’ factum, the plaintiff states, again, that these are properly pleaded and not subject to immunity due to:

(a) the statutory exception to immunity being bad faith/**mala fides**; and

(b) moreover, subject to the results of the constitutional challenge to s.9 of the **Law Society Act**.

- **Plaintiff’s Responding Motion Record, at Tab 6, at pp. 70-73(B)**

- ***Breach of s.7 and 15 of the Charter***

46. With respect to paragraphs 71- 79 of the Defendants’ factum, the Plaintiff again reiterates that those **Charter** violations (torts) are properly pleaded.

- **Plaintiff’s Responding Motion Record, at Tab 6, at pp. 73A;73B;74**

- ***Constitutional Challenge(s) to Law Society Act***

47. With respect to paragraphs 80 – 88 of the Defendants’ factum, the issue of the constitutionality of s.49.3 is not premature owing to the following;

- (a) The statutory provision it was invoked against the Plaintiff in the complaints initially forwarded to him;
- (b) the doctrine of “reasonable hypothetical” in constitutional law applies.³

- **Plaintiff’s Responding Motion Record, at Tab 6, at pp. 1(c); 73A;73B;75-77**

- ***Notice of Constitutional Question***

48. With respect to the paragraph 89 of the Defendants’ factum and the proposition that the Plaintiff has failed to provide a Notice of Constitutional Question, with respect, this is an erroneous submission in that such notice is only required when the argument, **on the merits**, of any such determination is being adjudicated, and **NOT** on any preliminary motions, such as a motion to **strike**, where the merits of the challenge are **not** being adjudicated.

- ***No Leave to Amend***

49. With respect to paragraphs 114 to 115 of the Respondent’s Written Representations and that the claim should be given no leave to amend, the Plaintiffs state that if struck, in whole or in part, the Plaintiffs should be granted leave to amend in accordance with the jurisprudence;

- ***Collins v. Canada*** [2011] D.T.C. 5076
- ***Simon v. Canada*** [2011] D.T.C. 5016

³ ***R. v. McDonald***, 1998 CanLII 13327 (ON CA); ***Law Society Of Upper Canada v. Ernst & Young***, 2003 CanLII 14187 (ON CA); ***R. v. Nur***, 2013 ONCA 677 (CanLII); ***R. v. Charles***, 2013 ONCA 681 (CanLII); ***R. v. John***, 2018 ONCA 702 (CanLII); ***R. v. Vu***, 2018 ONCA 436 (CanLII); ***R. v. Plange***, 2019 ONCA 646 (CanLII); ***R. v. M.R.M.***, 2020 ONCA 75 (CanLII); ***R. v. Safieh***, 2021 ONCA 643 (CanLII); ***Baber v. Ontario (Attorney General)***, 2022 ONCA 345 (CanLII); ***R. v. N.S.***, 2022 ONCA 160 (CanLII); ***R. v. Abdelrazzaq***, 2023 ONCA 112 (CanLII);

- *Spatling v. Canada* 2003 CarswellNat 1013
- *Larden v. Canada* (1998) 145 F.T.R. 140
- *Action4Canada v British Columbia (Attorney General), 2022 BCSC 1507 (CanLII)*

E/ Issues and Relief Not Covered in Defendants' Submissions

50. It is lastly submitted that, insofar as the Defendants neglect or chose, not to cover or move to strike other relief and/or paragraphs contained in the statement of claim, the Plaintiffs have not dealt with those portions of the claim in the within memorandum, *albeit* the Plaintiffs continue to rely on those paragraphs and relief.

F/ Costs

51. The Plaintiffs, in accordance with the jurisprudence, with respect to motions to strike, state that, where the motion is dismissed, in the main, the Plaintiffs are entitled to costs.

- Singh v. MEI [1985] S.C.R. 177 (SCC)*
- Borowski v. Canada [1989] 1 S.C.R. 342 (SCC)*
- Canada (MEI) v. Villafranca [1992] F.C.J. No. 1189 (F.C.A.)*
- Lominadze v. Canada (MCI) [1998] F.C.J. No. 115*
- Ruby v. Canada [2002] S.C.J. No. 73 (SCC)*

PART IV - ORDER SOUGHT

52. The Plaintiffs respectfully request that:

- (a) the Defendants' motion to strike be dismissed;
- (b) in the alternative, if any portions are struck, that is to be without prejudice, to file an amended statement of claim in accordance with the jurisprudence⁴;
- (c) costs of this motion, and, in accordance with *Native Women's Assn. of Canada vs. Canada [1994] 3 SCR 627*, such further and other relief as this Honourable Court deems just.

⁴ *Collins v. Canada* [2011] D.T.C. 5076; *Simon v. Canada* [2011] D.T.C. 5016; *Spatling v. Canada* 2003 CarswellNat 1013; *Larden v. Canada* (1998) 145 F.T.R. 140; *Action4Canada v British Columbia (Attorney General), 2022 BCSC 1507 (CanLII)*

LL

All of which is respectfully submitted

Dated this day of July 2023.

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AUTHORITIES

1. [*A.G. Canada v. Inuit Tapirasiat of Canada* \[1980\] 2 S.C.R. 735;](#)
2. [*Action4Canada v British Columbia \(Attorney General\)*, 2022 BCSC 1507 \(CanLII\)](#)
3. [*Adams-Smith v. Christian Horizons* \(1997\)14 C.P.C.\(4th\)78 \(Ont. Gen. Div.\)](#)
4. [*B.C. v. Imperial Tobacco Canada Ltd.*, \[2005\] 2 S.C.R. 473](#)
5. [*Baber v. Ontario \(Attorney General\)*, 2022 ONCA 345 \(CanLII\);](#)
6. [*Borowski v. Canada* \[1989\] 1 S.C.R. 342 \(SCC\)](#)
7. [*Canada \(MEI\) v. Villafranca* \[1992\] F.C.J. No. 1189 \(F.C.A.\)](#)
8. [*Canada v. Arsenault* 2009 FCA 242;](#)
9. [*Canada v. Solosky*, \[1980\] 1 S.C.R. 821](#)
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11. [*Dalex Co. v. Schawartz Levitsky Feldman* \(1994\) 19 O.R. \(3d\) 463 \(Gen. Div.\)](#)
12. [*Dumont v. A.G. Canada* \[1990\] 1 S.C.R. 279;](#)
13. [*Dunsmuir v. New Brunswick*, 2008 SCC 9 \(CanLII\),](#)
14. [*Grant v. Cormier – Grant, et. al* \(2001\) 56 O.R. \(3d\) 215 \(Ont. C.A.\)](#)
15. [*Hanson v. Bank of Nova Scotia* \(1994\) 19 O.R. \(3d\) 142 \(C.A.\)](#)
16. [*Hunt v. Carey Canada Inc* \[1990\] 2 S.C.R. 959;](#)
17. [*Larden v. Canada* \(1998\) 145 F.T.R. 140](#)
18. [*Law Society Of Upper Canada v. Ernst & Young*, 2003 CanLII 14187 \(ON CA\);](#)
19. [*Lominadze v. Canada \(MCI\)* \[1998\] F.C.J. No. 115](#)
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21. [*Miller \(Litigation Guardian of\) v. Wiwchairyk* \(1997\) 34 O.R. \(3d\) 640 \(Ont.Gen.Div\)](#)
22. [*Nash v. Ontario* \(1995\) 27 O.R. \(3d\) 1 \(Ont. C. A.\).](#)

23. [*Native Women's Assn. of Canada vs. Canada* \[1994\] 3 SCR 627,](#)
24. [*Nelles v. Ontario* \[1989\] 2 S.C.R. 170](#)
25. [*Odhavji Estate v. Woodhouse* {2003} 3 S.C.R. 263, 2003 SCC 69](#)
26. [*Operation Dismantle v. The Queen, 1985 CanLII 74 \(SCC\), \[1985\] 1SCR441*](#)
27. [*R. v. Abdelrazzaq*, 2023 ONCA 112 \(CanLII\);](#)
28. [*R. v. Charles*, 2013 ONCA 681 \(CanLII\);](#)
29. [*R. v. Imperial Tobacco Canada Ltd*](#)
30. [*R. v. John*, 2018 ONCA 702 \(CanLII\);](#)
31. [*R. v. M.R.M.*, 2020 ONCA 75 \(CanLII\);](#)
32. [*R. v. McDonald*, 1998 CanLII 13327 \(ON CA\);](#)
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35. [*R. v. Plange*, 2019 ONCA 646 \(CanLII\);](#)
36. [*R. v. Safieh*, 2021 ONCA 643 \(CanLII\);](#)
37. [*R. v. Vu*, 2018 ONCA 436 \(CanLII\);](#)
38. [*R.D. Belanger & Associates Ltd. v. Stadium Corp. of Ontario Ltd.* \(1991\) 5 O.R. \(3d\) 778 \(C.A.\)](#)
39. [*Roncarelli v. Duplessis*, {1959} S.C.R. 121](#)
40. [*Ruby v. Canada* \[2002\] S.C.J. No. 73 \(SCC\)](#)
41. [*Simon v. Canada* \[2011\] D.T.C. 5016](#)
42. [*Singh v. Canada \(Citizenship and Immigration\)*, 2010 FC 757,](#)
43. [*Singh v. MEI* \[1985\] S.C.R. 177 \(SCC\)](#)
44. [*Spatling v. Canada* 2003 CarswellNat 1013](#)
45. [*TD Bank v. Deloitte Hoskins & Sells* \(1991\) 5 O.R. \(3d\) 417 \(Gen. Div.\)](#)
46. [*Thorson v. Canada \(AG\), No. 2* \[1975\] 1 S.C.R. 138](#)

47. *Trendsetter Ltd. v. Ottawa Financial Corp. (1989)32 O.A.C. 327 (C.A.)*

Statutory Provisions

1. *Law Society Act, s.9 and 49.3*

Liability of benchers, officers and employees

9 No action or other proceedings for damages shall be instituted against the Treasurer or any bencher, official of the Society or person appointed in Convocation for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation, a by-law or a rule of practice and procedure, or for any neglect or default in the performance or exercise in good faith of any such duty or power. R.S.O. 1990, c. L.8, s. 9; 1998, c. 21, s. 4.

Law Society Act s.49.3

**Investigations
Conduct**

49.3 (1) The Society may conduct an investigation into a licensee's conduct if the Society receives information suggesting that the licensee may have engaged in professional misconduct or conduct unbecoming a licensee. 2006, c. 21, Sched. C, s. 43.

Powers

(2) If an employee of the Society holding an office prescribed by the by-laws for the purpose of this section has a reasonable suspicion that a licensee being investigated under subsection (1) may have engaged in professional misconduct or conduct unbecoming a licensee, the person conducting the investigation may,

- (a) enter the current or former business premises of the licensee between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the licensee or, in the case of a former business premises, by a person with the authority to allow entry into the premises;
- (b) require the production of and examine any documents that relate to the matters under investigation, including client files; and
- (c) require the licensee and people who work or worked with the licensee to provide information that relates to the matters under investigation. 2006, c. 21, Sched. C, s. 43; 2020, c. 11, Sched. 13, s. 7 (1).

Capacity

(3) The Society may conduct an investigation into a licensee's capacity if the Society receives information suggesting that the licensee may be, or may have been, incapacitated. 2006, c. 21, Sched. C, s. 43.

Powers

(4) If an employee of the Society holding an office prescribed by the by-laws for the purpose of this section is satisfied that there are reasonable grounds for believing that a licensee being investigated under subsection (3) may be, or may have been, incapacitated, the person conducting the investigation may,

- (a) enter the current or former business premises of the licensee between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the licensee or, in the case of a former business premises, by a person with the authority to allow entry into the premises;
- (b) require the production of and examine any documents that relate to the matters under investigation, including client files; and
- (c) require the licensee and people who work or worked with the licensee to provide information that relates to the matters under investigation. 2006, c. 21, Sched. C, s. 43; 2020, c. 11, Sched. 13, s. 7 (2).

2. *Canadian Charter of Rights and Freedoms, s. 7,8,15*

Section 7 - Life, liberty, and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Section 7 guarantees the life, liberty and personal security of all Canadians. It also requires that governments respect the basic principles of justice whenever they intrude on those rights. Section 7 often comes into play in criminal matters because an accused person clearly faces the risk that, if convicted, his or her liberty will be lost.

Section 8 - Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

According to the Supreme Court of Canada, the purpose of section 8 is to protect a reasonable expectation of privacy. This means that those who act on behalf of a government, such as police officers, must carry out their duties in a fair and reasonable

way. They cannot enter private property or take things from others unless they can show that they have a clear legal reason.

In most cases, they are allowed to enter private property to look for evidence or to seize things only if they have been given a search warrant by a judge. On the other hand, government inspectors may enter business premises without a warrant to check if government regulations are being observed.

Equality rights – section 15

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

- **(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.**

Section 15 of the Charter makes it clear that every individual in Canada – regardless of race, religion, national or ethnic origin, colour, sex, age or physical or mental disability – is to be treated with the same respect, dignity, and consideration. This means that governments must not discriminate on any of these grounds in its laws or programs.

The courts have held that section 15 also protects equality on the basis of other characteristics that are not specifically set out in it. For example, this section has been held to prohibit discrimination on the grounds of sexual orientation, marital status, or citizenship.

The Supreme Court of Canada has stated that the purpose of section 15 is to protect those groups who suffer social, political, and legal disadvantage in society. Discrimination occurs when a person, because of a personal characteristic, suffers disadvantages or is denied opportunities available to other members of society.

At the same time as it protects equality, the Charter also allows for certain laws or programs that aim to improve the conditions of disadvantaged individuals or groups. For example, programs aimed at improving employment opportunities for women, Indigenous peoples, visible minorities, or those with mental or physical disabilities are allowed under subsection 15(2).

Court File No.: CV-22-00683933-0000

Rocco Galati

Sharon Greene et al.

-and-

Plaintiff

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

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