

CANADA / JUDGMENT

Bazylak v. British Columbia

2025 BCSC 2346

COURT

Supreme Court of British Columbia

DECIDED

27 November 2025

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2025 BCSC 2346 Bazylak v. British Columbia

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bazylak v. British Columbia,

2025 BCSC 2346

Date: 20251127

Docket: S227710

Registry: Vancouver

Between:

Ryan Bazylak

Plaintiff

And

His Majesty the King in Right of the Province of British Columbia and

Constable Lance Fraser

Defendants

Before: The Honourable Justice Laurie

Reasons for Judgment

In Chambers

The Plaintiff, appearing in person:

R. Bazylak

Counsel for the Defendant, HTMK British Columbia:

S.T. Dillman

Counsel for the Defendant, Constable Lance Fraser:

J. Michaud

Place and Date Hearing:

Vancouver, B.C.

May 5, 9, and June 9, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 27, 2025

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INTRODUCTION

- [1] Each of the parties has an application before me.
- [2] The plaintiff, Ryan Bazylak, applies for special costs and double costs against the defendants, Constable Lance Fraser, and His Majesty the King in Right of British Columbia ("Province"), for allegedly engaging in "procedural abuse, delay tactics and conduct inconsistent with the fair and efficient administration of justice".
- [3] The defendants each apply to strike the plaintiff's claim on the basis that it discloses no reasonable cause of action pursuant to R. 9-5(1)(a) of the Supreme Court Civil Rules, [SCCR].

BACKGROUND

- [4] On June 27, 2018, Mr. Bazylak, while riding his motorcycle in Burnaby, British Columbia, was stopped by Cst. Fraser of the Vancouver Police Department. Cst. Fraser was on duty while seconded to a joint task force with the Royal Canadian Mounted Police called the Integrated Roadway Safety Unit.
- [5] Cst. Fraser served Mr. Bazylak with a violation ticket alleging that he had committed the following offences under the Motor Vehicle Act, R.S.B.C. 1996, c. 318 [MVA]: s. 148(1)-excessive speed; s. 144(1)(a)-driving without due care and attention; and s. 177-failing to yield to an emergency vehicle.
- [6] On November 27, 2019, after a 3-day trial, Judicial Justice Bowes found Mr. Bazylak guilty of the offences under ss. 148(1) and 144(1)(a) of the MVA, and not guilty of the offence under s. 77 ("Trial Decision").
- [7] On August 26, 2020, Winteringham J. (then of this Court) allowed Mr. Bazylak's appeal from the Trial Decision and directed that acquittals be entered. The appeal was conceded by the Provincial Crown.
- [8] On October 8, 2020, Mr. Bazylak filed two Notices of Claim in the Provincial Court of British Columbia (BCPC): (1) Action 2067689 against Her Majesty the Queen in right of the Province of British Columbia (Bazylak v. HMQBC), and (2) Action 2067690 against Cst. Fraser (Bazylak v. Fraser).
- [9] On March 25, 2022, Mr. Bazylak filed Amended Notices of Claim in the two actions.

- [10] On September 15, 2022, Provincial Court Judge Gordon ordered that the actions be transferred to the Supreme Court of British Columbia (BCSC). After the files were transferred, BCSC file numbers were assigned. Bazylak v. HMQBC became Action VLC-S-S-227710, and Bazylak v. Fraser became Action VLC-S-S-228579.
- [11] On August 28, 2023, Mr. Bazylak filed a new Notice of Civil Claim ("NOCC") in relation to action VLC-S-S-227710 which, among other things, named both HMQBC and Mr. Fraser as defendants.
- [12] During a case planning conference ("CPC") on January 16, 2024, Associate Judge Hughes ordered that Action S-228579 be consolidated with Action S-227710 and that the actions are to proceed under S-227710. Further, it was ordered that the NOCC is deemed to be a Further Amended Notice of Civil Claim ("FANOCC") pursuant to R. 6-1(1)(a), and that the defendants have leave to file an Amended Response to Civil Claim no later than January 31, 2024.
- [13] Cst. Fraser and the Province filed their Amended Response to Civil Claim on January 30 and January 31, 2024, respectively.
- [14] On October 7, 2024, at a second CPC, Justice Doyle ordered the defendants to file the materials for their applications to strike by December 13, 2024, and the plaintiff to file his response materials by January 17, 2025. Further, the parties were directed to set a mutually convenient date in February 2025 for the hearing of the defendants' applications.
- [15] Following the second CPC, the Province and Mr. Fraser filed their Notices of Application on December 12 and 13, 2024, respectively.
- [16] Mr. Bazylak filed his Application Response on January 31, 2025.
- [17] The defendants scheduled a hearing for their concurrent applications on February 14, 2025; however, the hearing was adjourned generally for lack of court time.
- [18] On April 1, 2025, Mr. Bazylak filed his present Notice of Application with a one-day hearing scheduled for May 5, 2025.
- [19] Prior to May 5, the defendants scheduled their applications for the same day without booking additional court time.
- [20] I agreed to hear the applications with Mr. Bazylak's application going first. However, at the commencement of their response to Mr. Bazylak's application, the defendants took the position that it would assist the Court to first hear their submissions on the motions to strike in order to appreciate the history of these proceedings. Consequently, submissions on these applications were heard together. The hearing commenced on May 5 and continued on May 9 and June 9, 2025. Judgment was reserved until today.

DISCUSSION

Should the FANOC be Struck in Whole or in Part Because it Discloses No Reasonable Claim Pursuant to SCCR R. 9-5(1)(a)?

Legal Framework

[21] Rule 9-5(1) provides:

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.

[22] The test on an application to strike a claim under R. 9-5(1)(a) is whether it is plain and obvious that the claim cannot succeed. It requires a conclusion that, assuming the facts as stated are true, those facts disclose no cause of action, and the pleadings disclose no arguable issue. If there is a chance that the action may succeed, then the action should be allowed to proceed: *Sahyoun v. Ho*, 2015 BCSC 392 at para. 57; *Hutcheson v. British Columbia*, 2020 BCSC 1986 at para. 21.

[23] The primary purpose of a notice of civil claim is to clearly set out the issues of fact and law to be determined in an action. The plaintiff must define legal issues and set out a concise statement of material facts supporting each cause of action to meet its basic purpose. These requirements ensure both efficiency and fairness of litigation. A defendant is entitled to know the case to be met, particularly where serious allegations are presented. A party should not have to divine the claims made against them. Further, a proper pleading allows the parties to focus their resources on issues that matter and ignore those that do not: *Hutcheson* at para. 19, citing *Sahyoun* at para. 72.

[24] A plaintiff must plead material facts to support the claim. Material facts are the elements essential to formulate a claim and are comprised of every fact that would be necessary for the plaintiff to prove in order to support their claim: *Canada (Attorney General) v. Frazier*, 2022 BCCA 379 at para. 71 [Frazier]; *Canada v. Harris*, 2020 FCA 124 at para. 24. If a material fact is omitted, a cause of action is not effectively pleaded: *Young v. Borzoni*, 2007 BCCA 16 at para. 20.

- [25] Bare allegations that are incapable of proof and based on speculation or assumptions are not material facts. In the absence of sufficient material facts, the court will not infer facts from bald legal conclusions: *Frazier* at para. 71; *Kindylides v. Does*, 2020 BCCA 330 at para. 33, leave to appeal to SCC ref'd, 39728 (14 October 2021).
- [26] The court is not required to assume that all allegations and assumptions in the pleadings are true. Rather, it may be appropriate to employ a "sceptical analysis": *Young* at paras. 30-32; *Weisenburger v. College of Naturopathic Physicians of British Columbia*, 2024 BCSC 1047 at para. 72.
- [27] A plaintiff is not entitled to rely on the possibility that new facts may turn up as the case progresses. While they may not be in a position to prove the facts pleaded at the time of the motion to strike, they must plead those facts. The pleaded facts form the basis upon which the possibility of success of the claim must be evaluated: *Frazier* at para. 20, citing *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 22.
- [28] The same principles apply to cases in which the plaintiff alleges Charter infringements: *Weisenburger* at para. 73.
- [29] A claim should not be struck where, if amended, it could disclose a reasonable cause of action. The pleadings should be read generously, particularly where the plaintiff is self-represented: *Olumide v. British Columbia (Human Rights Tribunal)*, 2019 BCCA 386 at para. 10; *Lam v. Macdonald*, 2018 BCSC 281 at para. 66.
- [30] However, it is not the court's role to give advice to self-represented plaintiffs about how to cure deficiencies in their pleadings or how to properly present their legal claims. The indulgence granted to a self-represented party should not interfere with another party's right to know the case to be met: *Lam* at para. 66.
- [31] The exercise of discretion in whether to grant leave to a responding party to amend a defective pleading may require consideration, including the degree to which the pleadings are deficient, the extent to which the deficiencies may be addressed by an obvious or straightforward amendment, the apparent merit of the claim that may be made out with amendment and the prejudice that may be incurred by dismissing the claim: *Jones v. Bank of Nova Scotia*, 2018 BCCA 381 at para. 35.

The FANOC

- [32] The FANOC alleges that:
- On June 27, 2018, Cst. Fraser "violently pulled over" and "violently arrested" the plaintiff (para. 1).
 - Cst. Fraser served the plaintiff with a violation ticket that "falsely claimed" that the plaintiff committed offences under the MVA (para. 1).

- c. On June 27, 2019, Cst. Fraser operated his police patrol vehicle "in an exceedingly dangerous manner" and "recklessly endangered" the life of the plaintiff (para. 2).
- d. On June 27, 2019, Cst. Fraser acted "in an oppressive manner" and "bullied the plaintiff" (para. 3).
- e. After June 27, 2019, Cst. Fraser continued to engage in malfeasance (para. 4).
- f. Cst. Fraser "violently arrested Max" and served him with a violation ticket for the same offences (para. 5).
- g. Cst. Fraser engaged in malicious prosecution of the plaintiff and Max (paras. 6, 7).
- h. Cst. Fraser "submitted false and fabricated evidence while providing false testimony in a judicial proceeding" (para. 8).
- i. Cst. Fraser "maliciously prosecuted innocent members of the public in order to satisfy his ego and roadside threats, as well as, to enhance and protect his professional reputation" (para. 9).
- j. The investigation into the plaintiff's formal complaint against Cst. Fraser was negligent (para. 10).
- k. Cst. Fraser prosecuted the plaintiff without grounds to do so and continued to lie in court (para. 11).
- l. Cst. Fraser admitted to collusion with his superiors regarding the case: (para. 11).
- m. On November 27, 2019, the plaintiff was convicted "on the basis of police candor and credibility". The evidence of the defence was ignored. The burden of proof was placed upon the defence. The plaintiff's right to a fair trial was violated, "amongst other Section 7 rights" (para. 12).
- n. On March 4, 2020, Cst. Fraser was "incorrectly cleared of wrongdoing" when the plaintiff's complaint was "discontinued". The police "have now created 'evidence' for themselves falsely claims that they did nothing wrong so they can use it in a judicial proceeding should one occur" (para. 13).
- o. On Aug. 26, 2020, the plaintiff's appeal of the Trial Decision was granted without contest. The Crown determined that:
 - Cst. Fraser "had absolutely no grounds to conduct the traffic stop, and the subsequent arrest and prosecution were without merit";
 - proceedings at trial were "a miscarriage of justice";
 - Cst. Fraser "should have been admonished for his actions";
 - Cst. Fraser's testimony was "'fragile' and absent of supporting documents"; and

- Cst. Fraser provided inconsistent and conflicting statements while under oath (para. 14).
- p. The Crown "failed to investigate or formally address the officer's perjury and malfeasance" (para. 14).
- q. The Supreme Court left the plaintiff "burdened with all the costs and damages resulting from the officer's and the Crown's malicious prosecution and baseless arrest " (para. 14).
- r. The Supreme Court Justice "knowingly set me on a course of action that was designed to be prohibitively expensive in order to provide the crown with unjust protection against malfeasance" (para. 14).
- s. The Judicial Justice at the trial was biased towards the police and discriminated against the plaintiff's mental health symptoms which were caused by the incident (para. 15).
- t. The plaintiff's rights under s. 7 of the Charter were violated by "the court, the crown, and the police" The violations include:
 - Loss of life, liberty and security of the person;
 - Unreasonable search or seizure;
 - Arbitrary detention or imprisonment;
 - Failure to provide reasons for arrest and detention;
 - Right to be tried in a reasonable amount of time;
 - Right to be presumed innocent until proven guilty; and
 - Right to be free from cruel and unusual treatment or punishment (para. 20).
- [33] Under the "Relief Sought" section, the FANOC states that monetary relief is sought and the amount "will reflect a similar discussion contained in *Samaroo v. Canada Revenue Agency* (2015)".
- [34] Under "Legal Basis", the FANOC states:
 1. *Samaroo v. Canadian Revenue Agency* (2018), which summarizes various other legal cases is the primary basis for this claim.
 2. *Miazga v. Kvello* (2009) regarding malicious prosecution.
 3. *R v. Robinson* (2015) regarding dishonest conduct.
 4. *Ward v. City of Vancouver* (2007) regarding Charter Violations.

Positions of the Parties

- [35] The defendants (applicants on the strike applications) argue that it is plain and obvious that the plaintiff's claims are bound to fail because he has not pleaded material facts in support of his claims. Rather, the FAN OCC relies on conclusory statements and bare assertions. They also submit that the pleadings do not overcome the immunity that applies to police officers and Crown Counsel in the performance of their respective duties.
- [36] Further, the defendants submit that the plaintiff should not be given leave to amend because he has had three opportunities to present his claim. He first filed his Notices of Claim in Provincial Court on October 8, 2020. On March 25, 2022, the plaintiff filed an Amended Notice of Claim. Following that, on August 28, 2023, the plaintiff filed the NOCC in Supreme Court in contravention of R. 19-1 which regulates the transfer of proceedings from Provincial Court. During the CPC in January 2024, the plaintiff confirmed that he was satisfied with the current state of his pleadings, and the NOCC was deemed to be the FAN OCC.
- [37] In response to the application, the plaintiff asserts that his claim is properly pleaded and discloses a reasonable cause of action. Further, he submits that he has provided "detailed particularized evidence in a 100+ page document". As I understand it, this is in reference to the "Book of Particulars" described below.
- [38] Orally, the plaintiff submitted that he relies on the following as forming part of his pleadings:
- a. The plaintiff's Reply to the Amended Responses to Civil Claims, filed on March 20, 2024 ("Reply"); and
 - b. A "Book of Particulars" which is attached to the plaintiff's affidavit filed on April 8, 2024.
- [39] The Reply refers to the Book of Particulars. Mr. Bazylak's April 8, 2024, affidavit states that it forms part of the Reply and that the Book of Particulars "outlines the particulars requested by the defense". The Book of Particulars is said to include the original Amended Notice of Claim that was rejected by the BCPC registry as it was too long and did not comply with filing requirements.
- [40] The defendants' position is that the contents of the Reply and Book of Particulars should not be considered on the application to strike as they are extrinsic to the pleadings. They remind the Court that pursuant to R. 9-5(2), no evidence is admissible on an application under R. 9-5(1)(a). Further, the Reply was filed out of time, and it is an improper reply.

The Claim

- [41] Reading the FAN OCC as generously as possible, it appears to rely on the following claims:
- a. Malicious prosecution;

- b. Malfeasance or misfeasance in public office;
- c. Negligent investigation;
- d. Assault or use of excessive force;
- e. Reckless endangerment based on negligent driving; and
- f. Various Charter violations.

Malicious Prosecution

[42] It appears that the plaintiff's primary claim is based on malicious prosecution.

[43] To succeed in such an action, a plaintiff must prove that the prosecution was: (1) initiated by the defendant; (2) terminated in favour of the plaintiff; (3) undertaken without reasonable and probable cause; and (4) motivated by malice or a primary purpose other than that of carrying the law into effect: *Miazga v. Kvello Estate*, 2009 SCC 51 at para. 3; *Watchel v. British Columbia*, 2019 BCSC 1087 at para. 21, aff'd 2020 BCCA 100, leave to appeal to SCC ref'd, 39319 (17 December 2020).

[44] The defendants submit that any claim of malicious prosecution made by the plaintiff is bound to fail. They assert that the plaintiff has failed to plead sufficient material facts that could establish a lack of reasonable and probable cause and any form of malice.

[45] Relying on *Henry v. British Columbia (AG)*, 2015 SCC 24 at para. 51 and *Watchel* at paras. 22 and 31, the defendants submit that the malice standard is stringent and will only be met in exceptional circumstances, therefore it is not enough to simply plead bald assertions of wrongdoing.

[46] However, SCCR R. 3-7(17) provides in respect of allegations of malice:

It is sufficient to allege malice, fraudulent intention, knowledge or other condition of the mind of a person as a fact, without setting out the circumstances from which it is to be inferred.

[47] In *Strauss v. Jarvis*, 2007 BCCA 605, the Court held that the above rule applies not only to the malice requirement for malicious prosecution, but also to the requirement of a lack of reasonable and probable cause: at paras. 11-12. See also: *Bains v. Green*, 2012 BCSC 1733 at paras 53-54; *Gamble v. Canada (Attorney General)*, 2011 BCCA 488 at paras. 37-38.

[48] In *Strauss*, the Court held that in respect of the third requirement for an action for malicious prosecution, it was sufficient for the plaintiff to plead that the defendants acted without reasonable cause and without an honest belief in his guilt: at paras. 14-15. In respect of the fourth requirement, the Court noted that pursuant to R. 19(23) [now R. 3-7(17)], it was sufficient to allege malice without providing further material facts or particulars: at para. 12.

- [49] Considering the FANOCOC generously, in my view, the plaintiff has sufficiently pleaded the elements of malicious prosecution. There is no dispute that the first two elements are met. With respect to lack of reasonable and probable cause, the plaintiff has pleaded in para. 1 that the ticket issued by Cst. Fraser "falsely claimed" that the plaintiff committed MVA offences, and in para. 11 that Cst. Fraser prosecuted him "without grounds to do so". With respect to the element of malice or improper purpose, the plaintiff has pleaded in para. 9 that Cst. Fraser "maliciously prosecuted" him "to satisfy his ego and roadside threats, as well as, to enhance and protect his professional reputation".
- [50] While the FANOCOC is by no means a model of clarity and pleads only the bare minimum in respect of this claim, it is sufficient to put the defendants on notice regarding the nature of the plaintiff's allegations regarding malicious prosecution.
- [51] At trial, the plaintiff faces a heavy burden of establishing malice. However, at this stage, as the Court cautioned in *Bains*, care must be taken not to weigh the merits of the case or dismiss an arguable case with a slim chance of success: at para. 50. I am not persuaded that the FANOCOC discloses no arguable issue; therefore, I decline to strike the claim for malicious prosecution.

Misfeasance in Public Office

- [52] The elements of misfeasance in public office were set out in *Odhavji Estate v. Woodhouse*, 2003 SCC 69 at para. 23. First, the defendant must engage in deliberate unlawful conduct in the exercise of public functions; second, the defendant must be aware that the conduct is unlawful and likely to harm the plaintiff. See also: *Bains* at para 56.
- [53] This claim is related to the malicious prosecution claim and the pleadings referred to in the above section are also relevant to the claim of misfeasance. The plaintiff claims that his prosecution was driven by malice or improper purposes. This amounts to an allegation of deliberate unlawful conduct in the exercise of public functions: *Bains* at para. 57. In paras. 3 and 4 of the FANOCOC, the plaintiff also pleaded that Cst. Fraser's conduct including his misfeasance caused the plaintiff "undue mental stress and anguish".
- [54] Reading the pleadings liberally and assuming the plaintiff's allegations regarding Cst. Fraser's conduct and motivations are true, in my view, it is not plain and obvious that this claim discloses no reasonable cause of action or is bound to fail. I therefore also decline to strike the claim for misfeasance in public office.

Negligent Investigation

- [55] In *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41, the Court recognized that investigating officers may owe a duty of care to suspects to conduct their investigation in a competent, non-negligent manner: para. 39.

- [56] The plaintiff's claim of negligent investigation is not against any officers who investigated him in respect of the traffic stop, rather he alleges that the investigation of his formal complaint against Cst. Fraser, conducted by the Police Complaint Commissioner ("PCC"), was negligent.
- [57] The PCC has not been named as a defendant in this action, and in any event the jurisprudence does not support the existence of a private law duty of care between the PCC and the plaintiff that could ground a cause of action for negligent investigation: *Allen v. New Westminster (City)*, 2017 BCSC 1329 at paras. 14-30.
- [58] Further, pursuant to s. 47(2) of the Police Act, R.S.B.C. 1996 c. 367 [PA], the PCC and any acting police complaint commissioner appointed under the PA are officers of the legislature. As such, they are independent officers that act separately from the Province, and the Province cannot be held vicariously liable for the conduct of these officers.
- [59] In addition, pursuant to s. 109(1)(a) of the PA, the PCC has discretion to direct that an investigation be discontinued if, having regard to all the circumstances, the PCC considers that further investigation is neither necessary nor reasonably practicable. I agree with the Province that if the plaintiff disagreed with the PCC's discretionary decision to discontinue the investigation, the plaintiff's remedy was to seek a judicial review of that decision pursuant to the Judicial Review and Procedure Act, R.S.B.C. 1996, c. 241: *Lim v. British Columbia (Police Complaint Commissioner)*, 2016 BCSC 406; *Wu v. Vancouver (City)*, 2019 BCCA 23 at paras. 44-47.
- [60] In the circumstances, I am satisfied that it is plain and obvious that the plaintiff's claim for negligent investigation discloses no reasonable cause of action and there is no reasonable amendment that could cure this defect.
- [61] I grant the application by the Province to strike the claim for negligent investigation in paras. 10 and 13 of the FANOC without leave to amend.

Negligent Driving and Use Excessive Force

- [62] With respect to the plaintiff's claims that appear to relate to allegations of negligent driving and use of excessive force by Cst. Fraser, the plaintiff has not pleaded sufficient material facts that, assuming they are true, could establish these claims. The FANOC relies on conclusory statements, for example: that Cst. Fraser "violently pulled over and violently arrested" the plaintiff, and that Cst. Fraser operated his police patrol car "in an exceedingly dangerous manner" that "recklessly endangered" the plaintiff's life.
- [63] In my view, it is appropriate to exercise the Court's discretion to permit the plaintiff to amend his pleadings in respect of these claims. Although as the defendants have pointed out, the plaintiff had previously agreed that he was content with the state of the FANOC, I am mindful that the plaintiff is a self-represented litigant who may not have fully appreciated the consequences of that agreement. Further, this is the first motion to strike in

this action. Therefore, this situation is unlike other cases in which the plaintiff has had opportunities to address deficiencies brought to their attention in the course of strike applications.

- [64] Further, based on the FANOC and the plaintiff's oral submissions including his reference to additional details contained in the Book of Particulars, I am unable to conclude at this time that the plaintiff's claim of negligent driving and/or use of excessive force discloses no arguable issue or is bound to fail if he was given an opportunity to amend his pleadings.
- [65] I exercise the Court's discretion to grant the plaintiff leave to amend his pleadings to plead material facts to support his claims of negligent driving and use of excessive force. To be clear, although I have considered some of the contents of the Book of Particulars as part of the plaintiff's submissions in the strike applications for the purpose of determining whether it is appropriate to grant him leave to amend, the Book of Particulars do not form part of the pleadings. If the plaintiff wishes to rely on material facts contained in that document, he must plead those facts in a subsequent FANOC.
- [66] To the extent that the Book of Particulars contained evidence, for example documents that were appended, I did not consider them for the purpose of this exercise.

Violation of Charter rights

- [67] Similarly, the plaintiff has not pleaded material facts that, assuming they are true, could establish his claims of violations of his Charter rights. Although he specifies only s. 7 of the Charter, the plaintiff alleges violations of other Charter rights without reference to the relevant sections. These include: s. 8 (right against unreasonable search or seizure); s. 9 (right against arbitrary detention or imprisonment); s. 10 (right to be informed of reasons for arrest or detention); s. 11(b) (right to be tried within a reasonable time); s. 11(d) (right to be presumed innocent until proven guilty); and s. 12 (right to be free from cruel and unusual treatment or punishment).

- [68] Section 24(1) of the Charter provides:

Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

- [69] In *Vancouver (City) v. Ward*, 2010 SCC 27 [Ward], the Supreme Court recognized that s. 24(1) is broad enough to include the remedy of constitutional damages for breach of a claimant's Charter rights if such remedy is found to be appropriate and just in the circumstances of a particular case: at para. 31.

- [70] However, an action for constitutional damages lies against the state and not individual actors: Ward at para. 22; Sahyoun at para. 95. Therefore, in respect of the plaintiff's claim against Cst. Fraser for damages based on alleged violations of his Charter rights, I grant the application to strike without leave to amend as it is plain and obvious that the claim is bound to fail.
- [71] In respect of the claim against the Province, while I am dubious as to the merits, I am unable to conclude at this point that the claim has no prospect of success if leave to amend was granted. I therefore grant the plaintiff leave to amend his pleadings to plead material facts in support of claims against the Province based on breaches of his Charter rights.

Witness Immunity

- [72] Cst. Fraser applies to strike the allegations that he gave false testimony at the plaintiff's trial based on the application of the witness immunity rule.
- [73] The witness immunity rule is an absolute privilege that bars all civil actions against a witness in a judicial or quasi-judicial proceeding. The rule applies to an allegation of conspiring to give false evidence. However, the rule does not preclude an action for planting evidence which is subsequently put before the court, or manufacturing documents, whether or not those documents are adduced in evidence: Workum v. Olnick, 2006 BCCA 528 at para. 7.
- [74] In Olynyk v. Kilback, 2010 BCSC 1694, the Court found that the witness immunity rule barred the plaintiff's claim for misfeasance in public office:
- [108] In the present case, even if Mr. Olynyk was able to prove or if I were to find that CO Kilback had perjured himself when he gave his evidence at the trial of the deer incident, Mr. Olynyk would not be able to sue CO Kilback for misfeasance in public office. CO Kilback would be protected by witness immunity. In this case, even if Mr. Olynyk was able to prove or I were to find that CO Kilback intentionally altered the emails that contained the photographs used in the trial of the deer incident, CO Kilback would still be protected by witness immunity. If this action did occur, it would not be the creation of evidence, such as a false confession referred to in the cases.
- [75] The witness immunity rule applies to the testimony of Cst. Fraser at the trial. Hence, even if the plaintiff's allegation that Cst. Fraser lied during his testimony is true and correct, it cannot support a civil action against Cst. Fraser. The allegations that Cst. Fraser lied or gave false evidence in court proceedings contained in paras. 8, 11, and 14 of the FANOC will be deleted.

Claims Brought on Behalf of Non-Parties

[76] The only plaintiff in this action is Mr. Bazylak. To the extent that the FAN OCC contains claims related to other persons, including an individual referred to as "Max" in paras. 5 and 6, those portions will be struck as those individuals do not have standing and are not parties to the action pursuant to R. 1-1.

Claims Against Justices and the Court

[77] To the extent that the plaintiff seeks relief based on decisions made by the court or by judges (in paras. 14 and 15 of the FAN OCC), those allegations will be struck without leave to amend as they disclose no reasonable cause of action. No member of the judiciary is a named defendant in this action and in any event, judges have absolute immunity from any legal action brought against them personally for acts or decisions in the performance of their judicial duties: *Morier and Bolly v. Rivard*, [1985] 2 S.C.R. 716, 1985 CanLII 26 (SCC) at paras. 71, 73; *Veeken v. British Columbia*, 2023 BCSC 943 at paras. 34-43, aff'd 2024 BCCA 80, leave to appeal to SCC ref'd, 41275 (26 September 2024). Further, the Province cannot be held vicariously liable for the conduct of judges since it does not have a supervisory role in relation to judges: *Simpson v. Koenigsberg*, 2018 BCSC 499 at para. 31; *Hokhold v. Canada (Attorney General)*, 2019 BCSC 1106 at para. 84, aff'd 2021 BCCA475, leave to appeal to SCC ref'd, 40295 (9 February 2023).

Is Mr. Bazylak Entitled to Special Costs and / or Double Costs?

[78] Based on the Notice of Application, the plaintiff seeks special costs against the defendants for "conduct contributing to procedural abuse and delay". Relying on SCCR R. 14-1(33), he also seeks double costs. Further, he seeks an order "recognizing the abuse of process and procedural warfare employed by the Defendants". The total amount of costs sought is \$640,400 (based on special costs calculated at \$320,200 x 2).

[79] The Notice of Application alleges that counsel for the defendants:

- a. filed "multiple motions to strike on overlapping or identical grounds" related to issues that could be resolved at trial without need for pre-trial motions;
- b. booked their applications in "short chambers" to "force delays";
- c. delayed scheduling a long chambers hearing;
- d. filed their motions to strike immediately after the plaintiff requested disclosure of police investigation materials;
- e. withheld the said investigation materials from the plaintiff; and
- f. communicated with the Court while the plaintiff's audio was muted during the chambers on February 14, 2025, after which the plaintiff was advised that the hearing was delayed.

Legal Principles

[80] An award of costs generally follows the outcome of the court proceeding and are normally awarded to the party who has succeeded in the litigation: *SCCR*, R. 14-1(9); *Cowherd v. Fraser Valley Health Region*, 2004 BCSC 698 at para. 3; *Fotheringham v. Fotheringham*, 2001 BCSC 1321 at para. 7, leave to appeal ref'd 2002 BCCA 454; *Tanious v. The Empire Life Insurance Company*, 2019 BCCA 329 at para. 46, leave to appeal to SCC ref'd, 38924 (20 February 2020); *Giles v. Westminster Savings and Credit Union*, 2010 BCCA 282 at para. 72.

[81] The court's discretion to depart from the ordinary rule that costs follow the event must be exercised judicially meaning that is it to be exercised in accordance with consistent principles: *Cowherd* at para. 4; *Giles* at para. 73. The party who seeks to displace the usual rule as to costs has the burden of persuading the court that the rule should be displaced: *Giles* at para. 75.

[82] The test for an interim costs order is set out in *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71 [*Okanagan Indian Band*] at para. 36:

The party seeking the order must be impecunious to the extent that, without such an order, that party would be deprived of the opportunity to proceed with the case. The claimant must establish a *prima facie* case of sufficient merit to warrant pursuit. And there must be special circumstances sufficient to satisfy the court that the case is within the narrow class of cases where this extraordinary exercise of its powers is appropriate

[83] See also: *Pasikhani v. Nosrati*, 2024 BCCA 138 at para. 22.

[84] Special costs are generally awarded where there has been some form of reprehensible conduct during the litigation: *Tanious* at para 53; *Gichuru v. Smith*, 2014 BCCA 414, at paras. 78 and 90, leave to appeal to SCC ref'd, 36221 (16 April 2015). Reprehensible conduct includes conduct that is scandalous, outrageous, or constitutes misbehaviour, as well as milder forms of misconduct that in a court's view deserves reproof or rebuke. In determining whether the conduct of a party is reprehensible, courts may consider whether the conduct complained of is a type from which it should seek to dissociate itself: *Mayer v. Osbourne Contracting Ltd.*, 2011 BCSC 914 at para. 8.

[85] In exceptional circumstances, special costs may be awarded for non-punitive purposes in the interests of justice to provide a higher degree of indemnification to the successful party: *Tanious* at paras. 54, 69; *Gichuru* at para. 90. Special costs are not a substitute for damages, nor should they be conflated with damages for mental distress: *Tanious* at para. 51.

[86] The appropriate time to consider whether an award for special costs should be made for the whole action or a discrete conduct in the litigation is at the end of the of the matter: *Mee Hoi Bros. Company Ltd. v. Borving Investments (Canada) Ltd.*, 2020 BCSC 2000 at para. 40.

- [87] An award for double costs is a punitive measure against a litigant for that party's failure, in all the circumstances, to have accepted an offer to settle that should have been accepted: *Hartshorne v. Hartshorne*, 2011 BCCA 29 at para. 25.

Application to This Case

- [88] There is no basis in these circumstances to depart from the ordinary rule that costs follow the event; therefore, the plaintiff's application is premature at best.
- [89] Although the plaintiff relies on *Okanagan Indian Band* in support of his application, he has not satisfied the test for interim costs described in that case. With respect to the requirement of impecuniosity, although the plaintiff deposed in his supporting affidavit that he has experienced "severe financial hardship", no details or documents have been provided regarding the plaintiff's finances to allow the Court to properly assess this factor. In addition, although I have found that it is not plain and obvious that some of the plaintiff's claims are bound to fail, that does not mean that the plaintiff has established a *prima facie* meritorious case. Based on the plaintiff's pleadings, he has not done so. Finally, even if the first two factors are met, there are no special circumstances on the record to satisfy the Court that this case falls within the narrow category of cases in which interim costs are warranted.
- [90] Further, I am not satisfied that the defendants' conduct as described in the Notice of Application constitutes reprehensible conduct that warrants special costs. The conduct complained of is not unusual or uncommon in litigation and there is no evidence of improper motives. I am also not persuaded that the defendants have committed an abuse of process as alleged.
- [91] Based on the record, there is also no basis to award double costs. In addition to the above reasons, the plaintiff does not assert in his application materials that the defendants failed to accept an offer to settle that should have been accepted, or that a reasonable offer for settlement was made. In oral submissions, the plaintiff suggested that he had made a settlement offer that included receiving Cst. Fraser's badge and gun on a frame and his "head on a platter". These demands are clearly unreasonable.
- [92] I know that Mr. Bazylak is deeply upset by the events surrounding his arrest and prosecution. His rage is palpable from his materials and submissions. I understand that he feels he was wronged, however no one is exempt from the rule of law, and he is not entitled to any form of relief simply because he demands it, as he seems to believe.
- [93] There is no factual or legal basis for the plaintiff's application for special costs and double costs. The application is dismissed.

CONCLUSION

- [94] In summary, the following portions of the FANOCC are struck out:

- a. The entirety of paras. 5, 6, 8, 10, 13, and 15;
 - b. The following portions of para. 11:
 - "and continued to lie in court", and
 - "Constable Fraser admitted to collusion with his superiors regarding the case and a lawyer was sent to assist Fraser in discrediting the defense".
 - c. The following portions of para. 14:
 - The following sentences: "The Crown determines that the officer's testimony was 'fragile' and absent of supporting evidence. The Crown determines that the officer provided inconsistent and conflicting statements while under oath";
 - The reference to "perjury";
 - Sub-paragraph 14(a)(ii); and
 - Sub-paragraph 14(b) including 14(b)(i).
- [95] The plaintiff has liberty to file a second further amended notice of civil claim relating to claims not struck in this decision. Any further amended notice of civil claim from the plaintiff must be filed within 60 days from the date of this order, without prejudice to the defendants' right to apply to strike any further amended notice of civil claim filed by the plaintiff.
- [96] If the plaintiff does not file a second further amended notice of civil claim within 60 days, the claims based on negligent driving and use of excessive force against the defendants, and violations of Charter rights against the Province, are dismissed.
- [97] The plaintiff's application for special costs and double costs is dismissed.

COSTS

- [98] As these applications proceeded as a single hearing and there is divided success on the applications to strike, each party will bear their own costs.

"Laurie J."

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Prepared on 26 October 2026 · Esheria