

CANADA / JUDGMENT

Cimolai v. Halpenny

2025 BCSC 2410

COURT

Supreme Court of British Columbia

DECIDED

5 December 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 2410 Cimolai v. Halpenny

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cimolai v. Halpenny,

2025 BCSC 2410

Date: 20251205

Docket: S234652

Registry: Vancouver

Between:

Nevio Cimolai

Plaintiff

And

Robert Lorne Halpenny

Defendant

Before: The Honourable Madam Justice Morellato

Reasons for Judgment

The Plaintiff, appearing in person:

N. Cimolai

Counsel for the Defendant:

J.T. Lovell

Place and Dates of Hearing:

Vancouver, B.C.

November 5-6, 2024,

January 6-7, March 24-25

and August 21, 2025

Place and Date of Judgment:

Vancouver, B.C.

December 5, 2025

Table of Contents

I. INTRODUCTION.. 3

II. STATUTORY CONTEXT AND PROCEDURAL HISTORY. 4

III. BACKGROUND FACTS. 9

IV. APPLICATION TO STRIKE THE NOTICE OF CIVIL CLAIM UNDER RULE 9-5(1) 10

A. Positions of the Parties. 11

1. Dr. Halpenny. 11

2. Dr. Cimolai 12

B. Analysis. 14

1. Abuse of Process: Improper Collateral Attack. 14

2. Abuse of Process: Section 48(1) of the Medicare Protection Act 18

V. APPLICATION FOR SUMMARY JUDGMENT UNDER RULE 9-6. 22

VI. DISPOSITION.. 28

I. INTRODUCTION

- [1] The defendant, Dr. Robert Lorne Halpenny, brings an application seeking an order under Rule 9-5 of the Supreme Court Civil Rules ("Rules") that the Notice of Civil Claim brought by Dr. Nevio Cimolai against him be struck in its entirety. Alternatively, Dr. Halpenny seeks an order that the claim against him be dismissed under Rule 9-6 by way of summary judgment.

- [2] Dr. Cimolai's claim arises out of a 2021 decision and order of the Medical Services Commission ("Commission") in which he was found to have improperly billed the Medical Services Plan ("MSP") in the amount of \$682,744.04. The Commission also levied a surcharge and interest against Dr. Cimolai, and suspended his ability to bill MSP for a period of three years. Dr. Cimolai filed an unsuccessful statutory appeal, after which he filed this Notice of Civil Claim against Dr. Halpenny personally.
- [3] Dr. Cimolai is self-represented. In the introductory pleading in his Notice of Civil Claim, Dr. Cimolai asserts that his claim is "fundamentally related to torts, breaches of contract, and damages arising from the April 1, 2021 decision of Dr. Robert Lorne Halpenny, Chair, Medical Services Commission to retrospectively de-enroll the Plaintiff from the Medical Services Plan unilaterally on his own accord."
- [4] In the 52-page Notice of Civil Claim, Dr. Cimolai makes numerous allegations including: MSP billing auditors and other government employees falsified records and conspired against him in gathering evidence of his alleged improper billing practices; the Commission panel that heard his case ("Commission Panel") was invalidly appointed; the Commission Panel members were biased and in a conflict of interest; no actual order was made by the Commission Panel; the Commission Panel hearing his case, as well as Dr. Halpenny, acted in breach of the rules of procedural fairness in denying him the opportunity to be properly heard; and, Dr. Halpenny acted ultra vires his statutory authority. In addition, Dr. Cimolai pleads that Dr. Halpenny, along with other doctors and officials, committed acts of fraud and conspiracy. Further, Dr. Cimolai pleads that Dr. Halpenny acted with malice and bad faith, and that he also committed acts which constituted: malfeasance in public office, breach of contract, inducing breach of contract, intentional interference with economic relations, negligence, unjust enrichment, and other deliberately unlawful conduct. Dr. Cimolai also makes allegations in his pleadings of improper conduct against Dr. Halpenny's previous counsel.

II. STATUTORY CONTEXT AND PROCEDURAL HISTORY

- [5] Dr. Cimolai and Dr. Halpenny are both medical doctors. At all materials times, Dr. Halpenny was the Chair of the Commission.
- [6] The Commission is constituted under s. 3 of the Medicare Protection Act, R.S.B.C. 1996, c. 286. Sections 3 of the Medicare Protection Act provides, in part:
- 3 (1) The Medical Services Commission is continued consisting of 9 members appointed by the Lieutenant Governor in Council as follows:
- (a) 3 members appointed from among 3 or more persons nominated by the Association of Doctors of BC;
 - (b) 3 members appointed on the joint recommendation of the minister and the Association of Doctors of BC to represent beneficiaries;

- (c) 3 members appointed to represent the government.
- (2) The commission reports to the minister.
- (3) The Medical Services Plan established under the former Act is continued and the function of the commission is to facilitate, in the manner provided for in this Act, reasonable access, throughout British Columbia, to quality medical care, health care and prescribed diagnostic services for residents of British Columbia under the Medical Services Plan.
- (4) The Lieutenant Governor in Council must designate a member of the commission appointed under subsection (1)(c) as its chair and may designate another member of the commission as its deputy chair.
- (5) The chair of the commission must call a meeting at least once every 2 months and, by giving written notice to the chair, 3 or more members of the commission can require the chair to call a meeting.
- (8) Each member of the commission has one vote.
- (9) Decisions of the commission are on the agreement of the majority of members present at a meeting.
- (10) If the commission is not meeting, the chair may exercise a power, duty and function that the commission may exercise unless the commission has directed that the chair is not to exercise the power, duty or function.
- (11) The commission may sue or be sued in its own name or in the name of the government in any civil action respecting the commission or a special committee, but any proceeding by or against the commission is binding on the government, and the Crown Proceeding Act applies accordingly.
- [7] Under s. 36 of the Medicare Protection Act, the Commission may appoint inspectors to audit the billing practices of physicians. The Commission may also appoint panels to hold hearings related to, among other things, the billing practices of physicians in the province.
- [8] Section 6 of the Medical Protection Act provides, in part:

6 (1) In this section, "panel" means a panel of 3 or more persons who are appointed by the commission and who represent each of the following:

 - (a) the Association of Doctors of BC;
 - (b) beneficiaries;
 - (c) government.
- (2) The commission may delegate any of the commission's or the chair's powers or duties, except those under section 11 (2), 15 (2), 24, 25, 26, 33 (4) or 37 (1), to a person or panel.

(3) The commission may delegate powers or duties under section 11 (2), 15 (2), 33 (4) or 37 (1) but only to a panel selected by the commission.

[9] Following an audit of Dr. Cimolai's billing practices, a hearing into the matter was held in September 2020, pursuant to ss. 15 and 37 of the Medicare Protection Act. Section 37 of the Act empowers the Commission to cancel or suspend a physician's billing privileges for various acts or causes, such as improper billing, after giving the physician an opportunity to be heard. Under s. 37 of the Act, the Commission is also empowered to recover sums paid to physicians, when the amounts paid arise from improper billings.

[10] Section 37 of the Medicare Protection Act provides, in part:

37(1) If the commission, after giving a practitioner, an owner of a diagnostic facility or a representative of a professional corporation an opportunity to be heard, determines that, because of

- (a) an unjustifiable departure from the patterns of practice or billing of practitioners in the practitioner's category,
- (b) a claim for payment in respect of a benefit that was not rendered, or
- (c) a misrepresentation about the nature or extent of benefits rendered,

the commission has paid an amount to the practitioner or any other person, or both, the commission may, by written order,

- (d) require the practitioner, owner of the diagnostic facility or representative of the professional corporation to pay to the commission money that the commission considers appropriate as arising out of the departure, claim or misrepresentation referred to in paragraphs (a) to (c), and
- (e) require the practitioner, owner of the diagnostic facility or representative of the professional corporation to adopt an appropriate pattern of practice or billing, as specified by the commission in the order.

(1.1) If a practitioner, an owner of a diagnostic facility or a representative of a professional corporation is ordered under subsection (1) (d) to pay money to the commission, they must also pay a prescribed surcharge.

(1.2) In subsection (1.3), "audit period" means, for a person, the period during which an audit takes place, giving rise to an order under subsection (1) (d) respecting the person.

(1.3) A person who must pay a prescribed surcharge under subsection (1.1) must also pay interest from the last day of the audit period, compounded semi-annually, on the sum of

- (a) the amount ordered under subsection (1) (d),
- (b) the surcharge under subsection (1.1) on the amount ordered under subsection (1) (d), and

(c) the compound interest accrued to date under this subsection.

(1.4) Interest under subsection (1.3) is payable at an annual rate equal to the prime lending rate of the banker to the government.

(2) Before taking action under subsection (1), the commission must notify in writing the practitioner, owner of a diagnostic facility or representative of a professional corporation

(a) of the commission's intention to proceed under this section,

(b) of the circumstances giving rise to the commission's intended action,

(c) that the practitioner, owner of a diagnostic facility or representative of a professional corporation has the right to a hearing, to be requested by the practitioner, owner of a diagnostic facility or representative of a professional corporation within 21 days from the date that the notice is delivered, and to appear in person, with or without legal counsel, at the hearing, and

(d) that, if the practitioner does not request a hearing or attend at the hearing, an order may be made in the practitioner's absence.

(4) The commission must advise the appropriate licensing or disciplinary body that an order under subsection (1) has been made respecting the practitioner or the owner of the diagnostic facility, if the owner is a practitioner.

(5) The commission may, for the purposes of this section and for the guidance of practitioners, prepare guidelines and criteria that may be applied to the patterns of practice of practitioners.

(6) In making an order under subsection (1), the commission may consider, and base the order on, any relevant source of information, including a source created on a statistical basis or by a comparison between benefits provided by the practitioner or diagnostic facility and corresponding benefits provided by other practitioners or diagnostic facilities, but it is not necessary for the commission to consider any particular benefit that the practitioner or owner of the diagnostic facility provided.

(7) The chair must give a copy of any order made under subsection (1) to the practitioner or owner of the diagnostic facility affected by it.

(8) An order under subsection (1) may include a requirement to pay the costs, or part of the costs, of the audit and hearing.

[11] On March 18, 2021, the Commission Panel ordered that Dr. Cimolai's enrollment in MSP be cancelled for a period of three years and that he repay \$682,744.04 in MSP billings, plus a surcharge and interest ("Commission Orders").

[12] More specifically, in its 51-page decision ("Commission Decision"), the Commission Panel ordered as follows:

[213] Based on the above quantification, the Panel orders the Enrollee [Dr. Cimolai] to pay to the Commission \$682,744.04 under s. 37(1)(d) of the Act [Medicare Protection Act], plus the surcharge prescribed under s. 37(1.1) and interest calculated in accordance with subsections (1.3) and (1.6).

[221] Under s. 15(2)(a) of the Act, the Panel orders the cancellation of the Enrollee's enrolment effective immediately and orders that he may not apply for de-enrolment for a period of 3 continuous years of him not being enrolled.

[13] Dr. Cimolai was provided an email copy of the Commission Decision on March 18, 2021. He also received a letter by mail from Dr. Halpenny in his capacity as Chair of the Commission, dated April 1, 2021, which enclosed a hard copy of the Commission Decision.

[14] On May 17, 2021, Dr. Cimolai filed an appeal under s. 43 of the Medicare Protection Act, after the requisite statutory period for appeal had elapsed. Under s. 43, a practitioner may appeal orders made under ss. 15(2) or 37(1) to the Supreme Court of British Columbia not more than 30 days after the date of the order in question:

43 (1) A practitioner, an owner of a diagnostic facility or a representative of a professional corporation in respect of whom an order was made under section 15 (2) or 37 (1) may appeal the order to the Supreme Court not more than 30 days after the date of the order or cancellation.

[15] The Commission brought an application to strike the appeal on the basis that it was filed out of time, beyond the requisite 30-day period.

[16] Dr. Cimolai sought leave to appeal to the Court of Appeal. Justice Groberman dismissed Dr. Cimolai's application for leave. He found that the judge hearing the motion to strike rightly concluded that the Supreme Court of British Columbia had no jurisdiction to extend the statutory limitation period.

[17] On appeal to a three-member panel, the Court of Appeal upheld Justice Groberman's ruling that there was no statutory authority to grant an extension of time for filing Dr. Cimolai's appeal and affirmed there was no discretion to extend the time for appeal under the Medicare Protection Act: *Cimolai v. British Columbia (Medical Services Commission)*, 2022 BCCA 396.

[18] Dr. Cimolai then applied for leave to appeal to the Supreme Court of Canada. On June 22, 2023, the Supreme Court of Canada dismissed his application: *Cimolai v. British Columbia (Medical Services Commission)*, leave to appeal ref'd [2023] S.C.C.A. No. 84.

[19] Six days after the Supreme Court of Canada denied Dr. Cimolai leave to appeal, he commenced this proceeding suing Dr. Halpenny for damages arising out of his conduct as the Chair of the Commission in connection with the Commission Orders.

- [20] In the course of this action, Dr. Cimolai obtained default judgment against Dr. Halpenny. When the facts were put to him that the pleading period had not expired before he was served with the defendant's filed Response to Civil Claim, Dr. Cimolai refused to consent to an order to set aside the default judgment. Dr. Halpenny brought an application before Justice Kent to set aside the default judgment. The default judgment was set aside on the basis that the period for filing the Response to Civil Claim had not yet elapsed.
- [21] Notably, at the hearing of the defendant's application to set aside the default judgment, Dr. Cimolai repeated his prior allegations that the defendant's then counsel should be disqualified. When the court advised that such an application to disqualify counsel must first be determined before any other application, Dr. Cimolai informed the court that he no longer wished to pursue an application to have counsel disqualified.
- [22] On April 23, 2024, Dr. Cimolai brought an application seeking an order that Dr. Halpenny produce a list of documents. On April 24, 2024, Dr. Halpenny brought a successful cross-application seeking an order that his obligation to list his documents be postponed under Supreme Court Rules 1-3, 7-1, 14-1, and 22-1. On September 18, 2024, Justice Hoffman dismissed Dr. Cimolai's application for document production. The court further ordered that the defendant could postpone his obligation to list his documents until 30 days following the determination of the defendant's application to strike the Notice of Civil Claim. Further, Justice Hoffman ordered that Dr. Halpenny was required to list his documents only in the event that the application to strike was dismissed.

III. BACKGROUND FACTS

- [23] As Chair of the Commission, Dr. Halpenny was engaged in Dr. Cimolai's case as follows.
- [24] On August 3, 2018, Dr. Halpenny received a memorandum from Dr. Evan Machin, Director of the Billing Integrity Program at the Ministry of Health. This memorandum enclosed a letter from Dr. Vern Davis, Chair of the Audit and Inspection Committee of the Ministry of Health, which recommended that the Commission consider seeking recovery from Dr. Cimolai of amounts determined in an audit report to have been improperly billed. The audit report covered the period from November 1, 2011 to October 31, 2016.
- [25] In the August 3, 2018 Memorandum from Dr. Machin to Dr. Halpenny, Dr. Halpenny was advised that the Billing Integrity Program recommended the Commission proceed under s. 15 of the Medicare Protection Act, which involved the possible cancellation of Dr. Cimolai's enrollment with MSP.
- [26] On November 1, 2018, Dr. Halpenny wrote to Dr. Cimolai confirming the Commission's intention to proceed under ss. 15 and 37 of the Medicare Protection Act.

[27] On September 18, 2019, Dr. Halpenny signed minutes of the Commission, dated September 18, 2019, appointing the Commission Panel, under s. 6 of the Medicare Protection Act, who was to decide the billing matters pertaining to Dr. Cimolai, under ss. 15 and 37 of the Medicare Protection Act.

[28] On April 1, 2021, Dr. Halpenny wrote a letter to Dr. Cimolai, enclosing the Commission Decision. Dr. Cimolai received this letter on April 4, 2021.

IV. APPLICATION TO STRIKE THE NOTICE OF CIVIL CLAIM UNDER RULE 9-5(1)

[29] Dr. Halpenny relies on Rule 9-5(1) which 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.

[30] Rule 9-5(2) provides that no evidence is admissible on an application under subrule (1)(a) regarding whether the pleading discloses "no reasonable claim". A claim will be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action: see *R. v. Imperial Tobacco Canada Ltd.*, [2011] 3 S.C.R. 45 at para. 17.

A. Positions of the Parties

1. Dr. Halpenny

[31] Dr. Halpenny makes several arguments in support of his application to strike the entirety of the Notice of Civil Claim. Relying on Rule 9-5(1), he argues primarily that the Notice of Civil Claim constitutes an abuse of process and discloses no reasonable claim.

[32] First, Dr. Halpenny submits that the Notice of Civil Claim is barred under the doctrine of collateral attack. Dr. Halpenny underscores that following the Commission Decision and Commission Orders in March 2021, Dr. Cimolai had a right to appeal them under s. 43(1) of the Medicare Protection Act but his appeal was unsuccessful. Accordingly, the Commission Orders are now final and conclusive and cannot be collaterally attacked in the instant proceeding. Dr. Halpenny asserts that the essence of Dr. Cimolai's claim is rooted in his previous unsuccessful appeal of the Commission Orders such that it amounts to an abuse of process.

[33] Second, Dr. Halpenny asserts that he has always acted appropriately in his capacity as Chair of the Commission and is immunized by statute "against all but one of Dr. Cimolai's claims".

[34] Dr. Halpenny relies on s. 48 of the Medicare Protection Act, which provides:

48 (1) No action for damages because of anything done or omitted to be done in good faith under this Act,

(a) in the performance or intended performance of any duty, or

(b) in the exercise or intended exercise of any power,

may be brought against a member of the commission, a member of a special committee, an inspector appointed under Part 7, a member of an advisory committee or any employee or other person who is subject to the commission's direction or to whom a power has been delegated under this Act.

[35] Specifically, Dr. Halpenny asserts the pleadings disclose "no action for damages relating to anything done or omitted to be done in good faith under the Medicare Protection Act in the performance or intended performance of any duty, or in the exercise or intended exercise of any power made against a member of the Commission".

[36] Third, Dr. Halpenny asserts that the Notice of Civil Claim ought to be struck since the pleadings are deficient and are not bona fides. Dr. Halpenny asserts that this lawsuit by Dr. Cimolai is entirely unfounded and meant to oppress and harass him, causing unnecessary anxiety, trouble, and expense.

[37] Fourth, Dr. Halpenny argues that the Notice of Civil Claim ought to be struck because it is oppressive, vexatious, and "violates the fundamental principles of justice underlying the community's sense of fair play and decency" and "seeks to undermine the proper administration of justice".

[38] Dr. Halpenny also argues the Notice of Civil Claim is barred by the application of the limitation period. I address this issue later in these Reasons for Judgment ("Reasons") in the context of Rule 9-6.

2. Dr. Cimolai

[39] Dr. Cimolai asserts that Dr. Halpenny "acted ultra vires in his capacity as Chair of the Medical Service Commission" when he "de-enrolled him". In this regard, Dr. Cimolai argues that ss. 3(9), 6(1), 6(2), 6(3), 15(2), 37(1) of the Medicare Protection Act do not empower Dr. Halpenny or the Commission to make the impugned decisions or orders.

[40] Dr. Cimolai also asserts that his "Claim combats executive and administrative abuse of power", relying on *Powder Mountain Resorts Ltd. v. British Columbia*, 2001 BCCA 619. Dr. Cimolai alleges that Dr. Halpenny acted in bad faith by, for example: breaching the Physician Master Agreements; "initiating matters" not previously authorized or agreed to by the Commission in the period between Commission meetings; and by Dr. Halpenny

affirming in his affidavit that "there was never any direction from the Commission that I [Dr. Halpenny], as Chair, was not to exercise any power, duty or function of the Commission when the Commission was not meeting".

- [41] Dr. Cimolai argues that there is a heavy onus on Dr. Halpenny in this application to show that "abuse is plain and obvious" and that Dr. Halpenny has not met this onus. He submits that "[t]here is no evidence tendered to show that it is plain and obvious" that his claim ought to be struck: see *Huang v. Silvercorp Metals Inc.*, 2016 BCSC 278.
- [42] Dr. Cimolai also argues that the remedy the defendant seeks, of striking his claim, is an extraordinary one that should not be granted as no injustice flows from his claim. For example, he argues that "a sufficient cause of negligence has already been made out".
- [43] Citing *Greengen Holdings Ltd. v. British Columbia (Ministry of Forests, Lands and Natural Resource Operations)*, 2018 BCCA 214 [Greengen], Dr. Cimolai argues that his claim is not a collateral attack. He submits that "[i]t is no longer law that a civil action constitutes a collateral attack only because it alleges a government representative (Dr. Halpenny) made an unlawful decision." Dr. Cimolai also argues:

The Applicant claims the Notice of Civil Claim is a collateral attack "on the Commission's order" but there has not been any such order at any time. The pointed admission by the defendant that he [Dr. Halpenny] made the decision to de-enroll on his own accord is also confirmed by others in the Ministry.

- [44] As such, Dr. Cimolai argues that the Commission Panel did not issue an order, and there is, therefore, no order to collaterally attack.
- [45] Further, Dr. Cimolai argues that Dr. Halpenny cannot rely on s. 48 of the Medicare Protection Act to immunize him from this lawsuit because Dr. Halpenny acted in bad faith.
- [46] In addition to the above submissions, Dr. Cimolai made numerous other arguments, which he addressed in considerable detail, over the course of several days of hearing. His detailed submissions included arguments regarding the merits of each of the pleadings in his Notice of Civil Claim, arguing they disclose reasonable claims. I have considered and assessed each of his arguments.

B. Analysis

- [47] I accept the submissions of Dr. Halpenny and find them persuasive. I have considered each of Dr. Cimolai's allegations and submissions, and I find them to be without merit.

[48] I conclude the Notice of Civil Claim ought to be struck in its entirety, for the following reasons: 1) the Notice of Civil Claim is a collateral attack and therefore an abuse of process under Rule 9-5(1)(d); 2) the pleadings relating to the torts and contract breaches are conclusory, speculative, and disclose no reasonable claim pursuant to Rule 9-5(1)(a); and 3) Dr. Halpenny is immune from the claim for damages pursuant to s. 48 of the Medicare Protection Act.

1. Abuse of Process: Improper Collateral Attack

[49] After examining each pleading and considering the pleadings as a whole, in light of the context before me and the parties' respective submissions, I find the Notice of Civil Claim, in essence, constitutes an abuse of process since it constitutes a collateral attack on the Commission Orders. These Commission Orders were unsuccessfully challenged by Dr. Cimolai in his previous appeal pursuant to s. 43 of the Medicare Protection Act. Accordingly, Dr. Cimolai's pleadings are an attempt to re-litigate the appeal he previously brought unsuccessfully before this court, the Court of Appeal, and the Supreme Court of Canada.

[50] Dr. Cimolai's first introductory pleading in his Notice of Civil Claim encapsulates what follows and what lies at the heart of his claim: a lawsuit directed at Dr. Halpenny, as Chair of the Commission. The Notice of Civil claim alleges it was Dr. Halpenny who made the decision "to retrospectively de-enroll" Dr. Cimolai "unilaterally on his own accord". As such, the claim is in essence an appeal of an administrative decision that has already been brought and defeated.

[51] Dr. Cimolai's argument that Dr. Halpenny "acted ultra vires" his capacity as Chair of the Commission is clearly an issue that was subsumed within in his statutory appeal under s. 43 of the Medicare Protection Act.

[52] Dr. Cimolai relies on Greengen, for the proposition that his civil claim is not caught by the doctrine of collateral attack. I cannot agree. In Greengen, as in Myers v. Canada (Attorney General), 2022 BCCA 160, the Court of Appeal declined to strike private law claims. However, those claims can be readily distinguished as the plaintiffs in those actions did not seek to overturn or avoid the effects of the administrative decisions and actions in question; that, however, is precisely what Dr. Cimolai seeks to do here.

[53] Dr. Cimolai not only argues that Dr. Halpenny acted ultra vires his statutory authority, but submits that the Commission Panel did not actually issue or make the any orders. It is clear that he is not content to accept the legal force of the Commission Orders, the Commission's administrative decisions or the consequences of those decisions.

[54] In Greengen, the Court of Appeal reasoned:

- [31] The doctrine of collateral attack is one facet of abuse of process. Broadly stated, commencing a civil action instead of seeking judicial review may, in some circumstances, constitute a collateral attack on a statutory decision and consequently an abuse of process: Stewart at para. 39.
- [32] However, a civil action will not be a collateral attack only because it alleges that a government decision is unlawful. TeleZone confirms that a civil action may constitute a collateral attack in two ways.
- [33] The first (and most obvious) way is where the civil action seeks to invalidate the decision or avoid its consequences. A plaintiff in a civil action cannot claim relief that is only available on judicial review, such as an order setting aside the decision. To seek such a remedy in a private law action effectively circumvents the deference that is usually given to statutory decision makers. It is important to note, however, that the doctrine applies only where the action attacks the legal force of the decision; it does not apply where the action attacks the factual basis for the decision: Toronto (City) at para. 34.
- [34] The second is where the plaintiff fails to plead a valid cause of action for damages. The superior courts' inherent jurisdiction includes a residual discretion to stay a claim for damages where in its "essential character it is a claim for judicial review with only a thin pretence to a private wrong": TeleZone at para. 78.
- [Emphasis added.]
- [55] This reasoning applies equally to statutory appeals under s. 43 of the Medicare Protection Act. In Dr. Cimolai's case, his pleadings make it clear that he does not accept the legal force and effect of the Commission Decision, the Commission Orders, or what he alleges is Dr. Halpenny's decision to de-enroll him. Accordingly, because a civil claim will only be permitted when the plaintiff accepts the legal force of the government decision in question, Dr. Cimolai's claim is indeed proscribed by the doctrine of collateral attack: see also Myers at para. 32. As such, allowing the Notice of Civil Claim to stand would constitute an abuse of process and it must be struck.
- [56] The reasoning of the Court of Appeal in Canada (Attorney General) v. Scow, 2022 BCCA 275, is of considerable assistance in addressing Dr. Cimolai's argument that the collateral attack doctrine does not apply in this case because of the pleadings of "malfeasance in public office" and bad faith. At para. 75, the Court in Scow reasons:
- [75] The essential nature of the claim must be based on a realistic appreciation of the practical result sought by the claimant. A judge must look beyond the words used in the pleading, the facts alleged, and the remedy sought to be satisfied that the claim is not an "artfully pleaded" but a thinly disguised attempt to pursue a claim in an inappropriate forum

[Emphasis in original.]

- [57] I find that the "essential character" of the Notice of Civil Claim is an attempt to circumvent the Commission Orders and Dr. Cimolai's unsuccessful statutory appeal under s. 43(1) of the Medicare Protection Act.
- [58] A review of his Statement of Facts in his Notice of Civil Claim makes it abundantly clear that Dr. Cimolai's allegations are issues that ought to have been raised when he challenged the Commission Orders under s. 43(1) of the Medicare Protection Act. Dr. Cimolai not only pleads that Dr. Halpenny acted "ultra vires" in de-enrolling him; his pleadings also take issue with the conduct of others involved in inspections and audits, monitoring of payments, the hearing and associated document disclosure, the appointment and constitution of the Commission Panel, and the bias and impartiality of that Panel.
- [59] The fact that Dr. Cimolai's statutory appeal was not heard on the merits because he filed his appeal outside the limitation period does not legitimize his civil claim. He cannot legally resurrect his appeal through this Notice of Civil Claim.
- [60] Furthermore, I have reviewed Dr. Cimolai's pleadings of fraud, conspiracy, malice, bad faith, misfeasance in public office, breach of contract, intentional interference with economic relations, negligence, unjust enrichment, deliberately unlawful conduct, and bad faith against Dr. Halpenny. Looking beyond the words used in the pleadings and considering the Notice of Civil Claim as a whole, I am satisfied that Dr. Cimolai's Notice of Civil Claim is a thinly disguised attempt to pursue a claim in an inappropriate forum after being unsuccessful in the appropriate forum (i.e., his s. 43(1) appeal): Scow at para. 75.
- [61] In the final analysis, Dr. Cimolai is seeking to avoid the legal force and effect of decisions and actions made in the exercise of statutory powers and duties.
- [62] My conclusion that the Notice of Civil Claim is an abuse of process is also reinforced by the application and effect of s. 48(1) of the Medicare Protection Act. I address this issue next.
2. Abuse of Process: Section 48(1) of the Medicare Protection Act
- [63] Section 48(1) of the Medicare Protection Act immunizes the persons named in that section against actions for damages "because of anything done or omitted to be done in good faith under this Act, either in the performance or intended performance of any duty, or in the exercise or intended exercise of any power". The persons protected against actions for damages include any "person who is subject to the commission's direction or to whom a power has been delegated under this Act": Medicare Protection Act, s. 48(1).
- [64] As Chair of the Commission, there is no doubt that Dr. Halpenny has delegated powers under the various sections of the Medicare Protection Act and is therefore protected from damages claims under s. 48(1): see also ss. 3(1)(c), 3(4), 3(5), 3(10), 6(2), (16)(2), 36(11), 37(2), 49(2)(c). As such, he is entitled to the protective language of s. 48(1).

- [65] I am mindful that in pleading bad faith, Dr. Cimolai argues that Dr. Halpenny is not protected by s. 48(1). For example, Dr. Cimolai argues that his claim "combats executive and administrative abuse of power". I have already addressed and dismissed this argument in the context of the doctrine of collateral attack, in light of the decision of our Court of Appeal in *Scow*. There is also, however, supporting authority to dismiss such pleadings in the context of statutory provisions that shield government administrators and decision-makers from actions in damages, even those arising from claims such as misfeasance in public office or bad faith.
- [66] Counsel for Dr. Halpenny rightly draws a parallel between Dr. Cimolai's case and circumstances in *Weisenburger v. College of Naturopathic Physicians of British Columbia*, 2024 BCSC 1047. The plaintiff in that case brought a civil action for damages against the College of Naturopathic Physicians of British Columbia and the Province in anticipation of a public health order or directive compelling the vaccination of naturopath physicians. The defendants brought an application under Rule 9-5(1)(a) and (d) to strike and dismiss the action.
- [67] The court considered the effect of an immunity provision, similar to s. 48, and reasoned:

Immunity from legal proceedings

92 (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against a health officer, a commissioner under Division 1 [Inquiries] or a person acting under the order or direction of either of these, because of anything done or omitted

- (a) in the exercise or intended exercise of a power under this or any other enactment, or
 - (b) in the performance or intended performance of a duty under this or any other enactment.
- (2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted in bad faith.

- [68] In striking the plaintiff's claim, the court reasoned in part as follows:
- [107] In a strike application, the court should consider and give considerable weight to such immunity provisions. If it is plain and obvious that an immunity applies in light of the facts pleaded, the claim should be struck: *Ernst* [v. Alberta Energy Regulator, 2017 SCC 1] at paras. 19 (per Cromwell J), 67 (per Abella J, concurring), 149 (per McLachlin CJ dissenting); *Walkom v. Law Society of British Columbia*, 2019 BCCA 391 at para. 19.
- [108] In *Ernst*, the Supreme Court of Canada confirms the efficacy of such immunity clauses. The Court notes that such clauses should be read expansively, to protect administrative decision-makers from the distraction of litigation flowing from the decisions they make in their legislatively-designated roles:

[57] Immunity is easily frustrated where the mere pleading of an allegation of bad faith or punitive conduct in a statement of claim can call into question a decision-maker's conduct: Gonzalez, at para. 53. Even qualified immunity undermines the decision-maker's ability to act impartially and independently, as the mere threat of litigation, achieved by artful pleadings, will require the decision-maker to engage with claims brought against him or her. As Lord Denning M.R. held, to be truly free in thought, judges should not be "plagued with allegations of malice or ill-will or bias or anything of the kind": Sirros, at p. 136, cited by Morier, at pp. 739-40.

[Emphasis added.]

[69] As reasoned by Justice Crerar in Weisenburger, at para. 110, the quotation in Ernst at para. 57 "indicates that a court should be sceptical and wary of artful pleadings of bad faith against defendants in order to avoid an immunity clause".

[70] In this light, I find that that the language of s. 48(1) effectively bars all claims for damages against Dr. Halpenny brought by Dr. Cimolai. The Commission and Dr. Halpenny were carrying out important public health care functions and duties, under the Medicare Protection Act, in addressing Dr. Cimolai's past billing practices. On a careful review of the pleadings in Dr. Cimolai's Notice of Civil Claim, in the particular context of these proceedings, I am simply unable to conclude that bald assertions of "wilful bad faith", "misfeasance" or "malfeasance in public office" are effectively capable of undermining the legislative intent behind s. 48 of the Medicare Protection Act. That provision rightly shields government administrators from damages claims relating to their course of conduct when performing their statutory duties.

[71] In reaching this conclusion, I also found the reasoning of the Court of Appeal in Kindylides v. Does, 2020 BCCA 330 at paras. 31-33, to be of assistance:

[31] First of all, as the respondents submit, the appellant has failed to plead the material facts supporting each legal element of the various causes of action alleged in the NOCC.

[32] Much of what is contained in the NOCC does not constitute "material facts" as defined in Young v. Borzoni et al, 2007 BCCA 16 [Young], citing Delaney & Friends Cartoon Productions Ltd. v. Radical Entertainment Inc. et al, 2005 BCSC 371:

[20] "[facts] that [are] essential in order to formulate a complete cause of action. If a material fact is omitted, a cause of action is not effectively pleaded."

[33] Rather the NOCC contains statements which, as pled, are incapable of proof and/or are based on speculation or assumptions. Such statements are not material facts: Samuda v. Knight, 2019 BCSC 133 at paras. 22-24; Imperial Tobacco at para. 22; Young at paras. 30-32.

- [72] As in *Kindylides*, Dr. Cimolai's Notice of Civil Claim suffers from the same defects: conclusory statements which are either incapable of proof or based on speculation and bald assertions and assumptions rather than the material facts essential to formulate complete or cogent causes of action.
- [73] Further, in *Kindylides*, the Court of Appeal cites the following passage from Justice MacDonald's reasons in *Owimar v. Stewart*, 2019 BCSC 1198, with approval, which I also find apposite in the instant case:
- [19] Care must be taken to avoid undermining the role of pleadings in identifying the issues by allowing a party to plead bald assertions or mere conclusory statements of law. A bald assertion of a conclusion is not a pleading of material fact:
- [18] There is no bright line between material facts and bald allegations, nor between pleadings of material facts and the prohibition on pleading of evidence. They are points on a continuum, and it is the responsibility of a motions judge, looking at the pleadings as a whole, to ensure that the pleadings define the issues with sufficient precision to make the pre-trial and trial proceedings both manageable and fair.
- [19] What constitutes a material fact is determined in light of the cause of action and the damages sought to be recovered. The plaintiff must plead, in summary form but with sufficient detail, the constituent elements of each cause of action or legal ground raised. The pleading must tell the defendant who, when, where, how and what gave rise to its liability.
- Mancuso v. Canada* (Minister of National Health and Welfare), 2015 FCA 227 at paras. 18-19 & 27.
- [20] However, even assuming the facts in the Claim to be true, the plaintiff still has no chance of succeeding and the Claim is sure to fail due the numerous radical defects in it: *Odhavji Estate v. Woodhouse*, [2003] 3 S.C.R. 263 at para. 15. The requirement to assume the facts pleaded to be true does not prevent skeptical analysis in the case of purely speculative allegations or assumptions: *Green v. Proline Management Limited*, 2017 BCSC 1656 at para. 35. Speculative and fanciful claims in a pleading may also demonstrate that it is plain and obvious no cause of action is disclosed: *Olenga v. British Columbia*, 2015 BCSC 1050 at paras. 17 and 21.
- [74] This reasoning applies squarely to Dr. Cimolai's Notice of Civil Claim, including "Part III", dealing with the legal basis of his claim and the pleading of bad faith against Dr. Halpenny. The mere assertion of bad faith in Dr. Cimolai's Notice of Civil Claim is not sufficient to defeat Dr. Halpenny's Rule 9-5 application. Furthermore, as reasoned by the Court of Appeal in *Scow*, at para. 78, "a court is not required to treat assertions of law made in a pleading as correct, nor is it bound to accept as accurate a claimant's assertions respecting the legal significance of pleaded facts".

- [75] I also conclude that the allegations of malfeasance in public office and bad faith, even assuming the facts in the Notice of Civil Claim to be true, disclose no reasonable claim, lack coherence, and have no chance of succeeding. The claim is sure to fail due its radical defects as delineated earlier in these Reasons: see Owimar at para. 20; Kindylides at para. 34.
- [76] I have considered the issue of granting leave to amend the Notice of Civil Claim. In the context of this case and for the reasons already articulated, I see no principled basis for granting leave to amend: see Kindylides at para. 51.

V. APPLICATION FOR SUMMARY JUDGMENT UNDER RULE 9-6

- [77] Dr. Halpenny also relies on Rule 9-6, submitting there is no genuine issue to be tried in this case. Given my conclusions that the entire Notice of Civil Claim ought to be struck under Rule 9-5, it is not strictly necessary to address the question of whether this action should be dismissed under Rule 9-6. Nevertheless, there is value in affirming that I have considered each and all of Dr. Cimolai's submissions under Rule 9-6 and, having done so, I find that Notice of Civil Claim contains no genuine issue for trial.
- [78] Rule 9-6 provides:
- (5) On hearing an application under subrule (2) or (4), the court,
 - (a) if satisfied that there is no genuine issue for trial with respect to a claim or defence, must pronounce judgment or dismiss the claim accordingly,
 - (b) if satisfied that the only genuine issue is the amount to which the claiming party is entitled, may order a trial of that issue or pronounce judgment with a reference or an accounting to determine the amount,
 - (c) if satisfied that the only genuine issue is a question of law, may determine the question and pronounce judgment accordingly, and
 - (d) may make any other order it considers will further the object of these Supreme Court Civil Rules.
- [79] Dr. Cimolai correctly submits that in a summary judgment application under Rule 9-6, the applicant bears the onus of showing there is no genuine issue for trial. Relying on the decision of our Court of Appeal in *on Beach Estate v. Beach*, 2019 BCCA 277, Dr. Cimolai underscores that the applicant must meet the high threshold of showing there is no viable claim "beyond a reasonable doubt": see para. 65. He also argues that given "his affidavits and the lack of cogent evidence from Dr. Halpenny", "it cannot be stated reasonably that the Claim is without merit": *Drummond v. Moore*, 2012 BCSC 496.
- [80] Dr. Cimolai relies on *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473, to argue that that issues of credibility have been raised in this application and this action which must be assessed at a conventional trial. As well, Dr. Cimolai submits that summary judgment would be inappropriate since discovery will bolster the triable issues, adding that he "suffers by far

the burden of prejudice in not having the documents and secondly in not having the issues heard on their merits and with evidence": *McLean v. Law Society of British Columbia*, 2016 BCCA 368; *Callahan Construction Co. Ltd. v. National Bank Financial Ltd.*, 2005 BCSC 1746.

- [81] Having carefully considered all of Dr. Cimolai's many allegations, pleadings, and submissions, I am unable to conclude that his Notice of Civil Claim sets out any genuine issue for trial. I accept Dr. Halpenny's submissions to the effect that Dr. Cimolai's claims, including those relating to bad faith, malfeasance in public office, breach of contract, and tort, not only constitute an abuse of process (as discussed earlier in these Reasons) but are essentially speculative assertions at best. Moreover, I find the record before me is sufficient to support my conclusion that there is no genuine issue for trial.
- [82] In reaching the conclusion that Dr. Cimolai's claim does not disclose a genuine issue for trial, I have considered the seminal decision of the Court of Appeal in *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202, 1989 CanLII 229 (C.A.), where the Court identified a number of factors that inform the assessment of whether it would be unjust to decide the issues before it on a summary trial basis. I have also considered the reasons in *Gichuru v. Pallai*, 2013 BCCA 60, that both parties must come to a summary trial hearing prepared to prove their claim, or defence, because:
- [32] judgment may be granted in favour of any party, regardless of which party has brought the application, unless the judge concludes that he or she is unable to find the facts necessary to decide the issues or is of the view that it would be unjust to decide the issues in this manner.
- [83] In this light, I am not only satisfied that I am able on the whole of the record to dismiss the issues before me, I am also satisfied that I am able to do so fairly. In short, I am of the view that this case is appropriate for summary disposition and that the claim ought to be dismissed.
- [84] I also accept Dr. Halpenny's submission that Dr. Cimolai's claim is barred by virtue of s. 6(2) of the Limitation Act, S.B.C 2012, c. 13. Section 6 of the Limitation Act states:
- 6 (1) Subject to this Act, a court proceeding in respect of a claim must not be commenced more than 2 years after the day on which the claim is discovered.
- (2) The 2 year limitation period established under subsection (1) of this section does not apply to a court proceeding referred to in section 7.
- [85] Dr. Halpenny asserts that the claims are time-barred because Dr. Cimolai commenced his claim over two years after any possible cause of action arose.
- [86] Section 8 of the Limitation Act addresses the issue of discovery of a claim as follows:
- 8 Except for those special situations referred to in sections 9 to 11, a claim is discovered by a person on the first day on which the person knew or reasonably ought to have known all of the following:

- (a) that injury, loss or damage had occurred;
- (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
- (c) that the act or omission was that of the person against whom the claim is or may be made;
- (d) that, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.

[87] Counsel for Dr. Halpenny asserts that by April 4, 2021, after receiving the Commission Orders and the supporting reasons of the Commission Panel, Dr. Cimolai possessed all the information to discover the claims alleged in his Notice of Civil Claim. Counsel further argues that Dr. Cimolai's claim is therefore barred by the Limitation Act, making it an abuse of process and without merit since it discloses no genuine issue to be tried.

[88] Counsel relies on *Kuntz v. McGraw* (1997), 36 B.C.L.R. (3d) 135, 1997 CanLII 4122 (C.A.). In *Kuntz*, our Court of Appeal found it was obvious from the evidence before the chambers judge that the plaintiff had discovered the defendants' alleged bad faith such that the limitation period had expired before he filed his claim. The Court found the claim was statute-barred and reasoned as follows:

[43] Since Dr. Kuntz would have known at once that the report was intentionally and deliberately false, he would have known that it was made in bad faith. In administrative law, the words "bad faith" have been used to cover a wide range of conduct: "dishonesty, fraud, bias, conflict of interest, discrimination, abuse of power, corruption, oppression, unfairness, and conduct that is unreasonable ... [and] conduct based on an improper motive, or undertaken for an improper, indirect or ulterior purpose" (*MacMillan Bloedel Ltd. v. Galiano Island Trust Committee* (1995), 10 B.C.L.R. (3d) 121 (C.A.), or actions which are other than frank and impartial (*Hollett v. Halifax (City)* (1975), 58 D.L.R. (3d) 746 (N.S.T.D.), *aff'd* 66 D.L.R. (3d) 524 (N.S.C.A.)).

[89] As such, the writ and endorsement in *Kuntz* was struck as an abuse of process and, alternatively, as having no merit.

[90] Counsel for Dr. Halpenny emphasizes that the Notice of Civil Claim alleges that he abused his office as Chair of the Medical Services Commission and breached the terms of the Physician Master Agreement by "retrospectively de-enrolling the Plaintiff from the Medical Service Plan for a period of three years and unilaterally on his own accord". Dr. Halpenny submits that, if there is any doubt as to when the claims set out in Part 3 of the Notice of Civil Claim were discovered by Dr. Cimolai, one need only review Part 1 of his Notice of Civil Claim where Dr. Cimolai refers to his own correspondence, sent to the attention of Dr. Halpenny, as early as February 5, 2020, where he specifies the facts upon which he relies on in advancing these claims.

- [91] More specifically, counsel for Dr. Halpenny submits that Dr. Cimolai sent a number of letters to Dr. Halpenny as early as February 5, 2020 and up to May 14, 2021. Counsel argues that in these letters, Dr. Cimolai raised the same issues he raises in his claim, including issues relating to: the constitution, conduct, deliberations, and conflicts of interest of the hearing panel members; Dr. Halpenny having unilaterally appointed the panel members and panel without authority; and Dr. Halpenny's alleged conflicts of interest.
- [92] These letters may be summarized as follows as described in Dr. Cimolai's Notice of Civil Claim:
- a) Dr. Cimolai's February 5, 2020 letter - Dr. Cimolai raised issues regarding the constitution, conduct, deliberations, and conflicts of interest of the hearing panel members, in addition to Dr. Halpenny having unilaterally appointed the panel members and panel. Concerns were also raised in relation to the alleged conflict of interest of Dr. Halpenny and his associations with Dr. Michael Golbey, the medical auditor of the on-site audit visit and the Ministry of Attorney General's representation that claimed that the Commission did not have any terms of reference. No response was received from Dr. Halpenny.
 - b) Dr. Cimolai's April 15, 2020 letter - Dr. Cimolai raises more detailed concerns regarding the issues of conflicts of interest and impropriety of decision-makers and the contracts of the panel members and their solely being appointed by Dr. Halpenny. No response was received from Dr. Halpenny.
 - c) Dr. Cimolai's September 10, 2020 letter - Dr. Cimolai raises concerns regarding: the failure to obtain and provide all relevant patient chart information, the tendering of falsified affidavits, suppression of relevant information, falsifications in document disclosure, tendering of false accounting documents, failing to provide affidavits used in putative proceedings, the conduct of "mock panel hearings", conflicts of interest, breaches of contract agreement and legislation, threats to extort financial resources, and direct interference with access to information. Dr. Halpenny was also appraised of: his alleged breach of the Physician Master Agreement, Dr. Cimolai's concern that a "Final Errors List" had not been tendered, the alleged errors of Dr. Golbey auditors, Dr. Cimolai's concern that he had not being given access to all relevant patients' documents, the alleged failure to elect the hearing panel because of the alleged lack of proper document disclosure, the "lack of election of any ad hoc panel given the lack of proper document disclosure", and the role of the Commission to mandate procurement of relevant patient records. No response was received from Dr. Halpenny.
 - d) Dr. Cimolai's April 5, 2021 letter - Dr. Cimolai raises concerns about: Dr. Halpenny not responding to his previous letters, the lack of document disclosure, including patient records, improper selection of the hearing panel hearing, and alleged conflicts of interest inherent with Dr. Halpenny's selection. Breaches of the Physician Master Agreements were again identified.

- e) Dr. Cimolai's April 11, 2021 letter - Dr. Cimolai requested that Dr. Halpenny forward the minutes of the Commission meeting at which the actions of Dr. Halpenny had been accepted. The irregular nature of the accounting methods used by the Medical Services Commission and Ministry of Health was also raised. No response to either was made thereafter.
 - f) Dr. Cimolai's April 16, 2021 letter - In the interim, Dr. Cimolai did receive a letter from Dr. Halpenny. Dr. Cimolai alleges that Dr. Halpenny confirmed in that letter that he had "acted on his own accord". In his letter to Dr. Halpenny, Dr. Cimolai continues to raise concerns about "mock ad hoc panel hearings" and Dr. Halpenny's "conflict" with Dr. Golbey. The letter also "identified the knowledge that Ms. Vanessa Starkey of the Commission secretariat previously indicated that Dr. Halpenny had initiated proceedings after receiving Dr. Golbey's report without validating any single item or accounting". She had also indicated that Dr. Halpenny had done so with a letter signed by him and as submitted to him from a Mr. Machin of the Billing Integrity Program. Dr. Cimolai requested the latter letter. No further response was received from Dr. Halpenny. No such letter had been received by June 2023.
 - g) Dr. Cimolai's April 23, 2021 letter - Dr. Cimolai again raised the general lack of responses from Dr. Halpenny and the alleged impropriety of several events. Dr. Cimolai cited theretroactive de-enrollment and its impact in preventing payment for patient services duly provided. Dr. Cimolai again sought "[e]vidence that the MSC proper had deliberated was again petitioned".
 - h) Dr. Cimolai's April 30, 2021 letter - Dr. Cimolai again reminded Dr. Halpenny of the issues he raised in his previous letters. No response was received.
 - i) Dr. Cimolai's May 14, 2021 letter - Given the lack of response from Dr. Halpenny, Dr. Cimolai once again requested responses to many of the alleged "irregularities of process and actions". No response was received.
- [93] Notably, the Commission Panel's March 18, 2021 written decision specifically addressed numerous concerns that Dr. Cimolai raised before the Panel in writing, prior to the Panel issuing its decision.
- [94] Each of the letters sent to Dr. Halpenny predate the filing of his Notice of Civil Claim by more than two years. Accordingly, Dr. Halpenny argues that Dr. Cimolai discovered his claim more than two years before commencing this action and, as such, the claim is statute-barred. Counsel notes that in Kuntz, the chambers judge and the Court of Appeal relied on affidavit evidence to conclude that the claim was an abuse of process and without merit (at para. 25)
- [95] Dr. Cimolai submits that the two-year limitation period under s. 6(2) of the Limitation Act does not apply for various reasons. For example, he argues that any delay was caused by others, not himself, and that this is a case of periodic breaches and/or continuous breaches by Dr. Halpenny. Dr. Cimolai argues that he is being denied MSP payments on each day that

a patient service arises after "the Halpenny de-enrollment" and also on "each and every renewal of the Physician Master Agreement". He asserts that his "[i]njury renews each time the Plaintiff is refused work by non-MSP parties but where the MSP de-enrollment is sued for that cause". Dr. Cimolai also argues breach of contract in this regard such that "each day of breach was a fresh cause of action" under the Physician Master Agreement.

- [96] I have also carefully considered each of Dr. Cimolai's submissions regarding the inapplicability of the limitation period in this case. I am simply unable to find that they warrant a conclusion that the limitation period ought to be postponed or that it does not apply.
- [97] I accept counsel for Dr. Halpenny's submissions on this issue. I am satisfied that Dr. Cimolai had or ought to have discovered his claims more than two years before commencing this action. Dr. Cimolai's own factual narrative in his pleadings, reproduced in part in these Reasons, supports this conclusion, as do his submissions and the record before me as a whole.
- [98] I note, in any event, that quite apart from the limitation period defence, I find that this claim discloses no genuine issue for trial.

VI. DISPOSITION

- [99] For the reasons set out above, this claim is dismissed.
- [100] As the successful party, Dr. Halpenny is entitled to the costs of these proceedings. Counsel for Dr. Halpenny has indicated he wishes to make written submissions on costs, following the release of these Reasons. Accordingly, unless the parties otherwise agree in writing, counsel for Dr. Halpenny shall file and then serve his costs submissions on Dr. Cimolai, by email, within 45 days of the date of these Reasons. Dr. Cimolai shall, in turn, file his written response on costs and serve them, by email, on counsel for Dr. Halpenny no later than 45 days after receipt of the costs submissions filed on behalf of Dr. Halpenny. The written costs submissions of each party shall be no longer than 10 pages in length.

"Morellato J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/24/2025BCSC2410.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/cimolai-v-halpenny-2025>

Prepared on 24 October 2026 · Esheria