

CANADA / JUDGMENT

Fidler v. Burns Lake (Village)

2013 BCSC 921

COURT

Supreme Court of British Columbia

DECIDED

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2013 BCSC 921 Fidler v. Burns Lake (Village)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Fidler v. Burns Lake (Village),

2013 BCSC 921

Date: 20130527

Docket: 15991

Registry: Smithers

Between:

Andrew Fidler

Plaintiff

And

Corporation of the Village of Burns Lake, Jordan MacKellar,

Brodie Ferris, Michael Esson, Tom Wamsteeker and Bob Purslow

Defendants

Before: The Honourable Mr. Justice R. Punnett

Reasons for Judgment

Andrew Fidler:

In Person

Counsel for the Corporation of the Village of Burns Lake:

Counsel for the individual Defendants:

R. Bortolin

E.L. Crocker

Place and Date of Hearing:

Smithers, B.C.

February 4, 2013

Written submissions of the Plaintiff received April 19, 2013

Written submissions of the individual Defendants received April 26, 2013

Place and Date of Judgment:

Smithers, B.C.

May 27, 2013

- [1] The plaintiff's claim is against the Corporation of the Village of Burns Lake ("Burns Lake") and five members of the Royal Canadian Mounted Police ("RCMP").
- [2] The notice of civil claim fails to comply with the Supreme Court Civil Rules relating to pleadings but it appears that the claim is for injuries arising from an alleged unlawful arrest and detention.
- [3] Burns Lake applies for summary judgement pursuant to Rule 9-6(4) to have the claims against it dismissed on the basis that the claim is without merit in that it lacks any basis in law.
- [4] The individual co-defendants apply to have the claims against them dismissed but for different reasons. Their application is threefold: first that the pleadings disclose no cause of action and are unnecessary, scandalous, frivolous or vexatious, second that there is no genuine issue for trial, and finally that almost all of the claims of the plaintiff are statute barred. Their application is brought pursuant to Rule 9-5(1) (Scandalous, frivolous or vexatious matters), Rule 9-6 (Summary Judgment), Rule 9-7 (Summary Trial) and the Limitation Act, R.S.B.C. 1996, c. 266.
- [5] While there are two separate applications are before me I propose to deal with both in these reasons.

Background

- [6] The plaintiff was arrested on October 19, 2006 and charged as follows:
 - a) Count 1: that he committed aggravated assault of George Betemps, contrary to s. 268(2) of the Criminal Code;

- b) Count 2: that in committing the assault he used a weapon, to wit, a pellet pistol, contrary to s. 267(a) of the Criminal Code;
 - c) Count 3: that in committing the assault he used a weapon, to wit, a stick, contrary to s. 267(a) of the Criminal Code, and
 - d) Count 4: that he did carry or have in his possession a weapon, a pellet pistol, for a purpose dangerous to the public peace or for the purpose of committing an offence contrary to s. 88(1) of the Criminal Code.
- [7] He was acquitted of all charges on June 2, 2009 on the basis of self-defence. He now makes numerous claims related to his arrest. At the outset I note the difficulty of characterizing some of the allegations due to the improperly pleaded claims. I am satisfied however that the characterization that follows accurately reflects what the plaintiff intended to allege and advance in law.
- [8] The plaintiff claims assault and/or battery, sexual assault, kidnapping, forceful confinement (false imprisonment), Charter breaches (violation of the right to liberty, to be free from cruel and unusual punishment, and to equal protection and due process of the law), unreasonable search and seizure, trespass, malicious prosecution, defamation, abuse of process and theft.
- [9] He further alleges that Burns Lake is vicariously liable for these actions.
- [10] I will address the application of Burns Lake and then the application of the five individual RCMP officers.

Application of Burns Lake

- [11] The plaintiff's claims are against Burns Lake as the employer of the officers, responsible for their training, supervision, discipline, hiring and conduct. He also alleges that Burns Lake is liable for a "tacit and implicit authorization, adoption, ratification, approval and acquiescence in" the acts of the defendant officers.
- [12] Burns Lake applies pursuant to Supreme Court Civil Rules 9-6(4) and 14-1 for dismissal of the plaintiff's claim against the corporation. It states that it is not the employer of the co-defendant officers nor does it have a role in their hiring, training, supervision, discipline or conduct. It also states that because its population is less than 5000 people, it is policed by the RCMP pursuant to an agreement between the federal and provincial governments, an agreement that Burns Lake is not party to.
- [13] The plaintiff does not contradict the defendant's evidence that the population of Burns Lake in 2006 was approximately 3,649, or the evidence that Burns Lake never had a role in training, supervising, disciplining or hiring the co-defendants. There is no agreement alleged nor is there an agreement between Burns Lake and the provincial or federal government giving Burns Lake any role in the RCMP's policing of Burns Lake.

Law and Discussion

[14] Pursuant to the Police Act, R.S.B.C. 1996, c. 367, since Burns Lake had at all material times less than 5,000 people, the provincial government was responsible for providing policing and law enforcement services in Burns Lake and the surrounding area:

3 (1) The government must provide policing and law enforcement services for the following:

(b) municipalities with a population of up to 5,000 persons;

[15] Section 14 of the Police Act gives authority for the RCMP to be the provincial police force if the provincial and federal government enter into an agreement whereby the RCMP is deemed to be the provincial police force and its members are deemed to be provincial constables.

[16] On April 1, 1992 the British Columbia government entered into an agreement with the federal government making the RCMP the provincial police force.

[17] This agreement places no control over policing in the hands of municipalities with a population of less than 5,000. Article 3.1 of the agreement provides that the internal management of the provincial RCMP shall remain under the control of Canada. It further states that the minimum standard of policing shall be set by the Commissioner of the RCMP, in consultation with the provincial Minister responsible for policing services within the Province.

[18] Section 15 of the Police Act states that a municipality with a population greater than 5,000 must provide policing and law enforcement in the municipality. The municipality is jointly and severally liable for torts committed by any of its "municipal constables" if the tort is committed in the performance of that persons duties (Police Act, s. 20).

[19] However, there is no similar requirement for municipalities with a population under 5,000 people to provide policing. Given Burns Lake is a community of less than 5000 individuals; the constables named as co-defendants are provincial constables not municipal constables. As a result the corporation is not vicariously liable for the actions of provincial constables. Such liability lies with the Province (Police Act s. 11); (Quinn v. Dubnyk, 2011 BCSC 792; Roy v. British Columbia (Attorney General), 2005 BCCA 88).

[20] I conclude the plaintiff has no basis for a claim against Burns Lake and the action against it is dismissed.

[21] I now turn to the application of the individual police officers.

Application of the Individual Defendants

- [22] As noted earlier, the individual defendants advance three challenges to the notice of civil claim. The first seeks to have the application struck due to deficient pleadings, the second seeks summary dismissal of the claim and the third to have the majority of the claims dismissed as having been commenced outside the limitation period.
- [23] In my view as the limitation issue is determinative of the majority of the claims I will address it first.

Limitation Act

- [24] The defendants submit that all of the claims except that of malicious prosecution are statute barred by virtue of the Limitation Act. They submit as well that the two-year limitation period is not postponed pursuant to s. 6(4) of the Limitation Act.
- [25] The running of time for the two-year limitation period under the Limitation Act generally starts on the date the injury or damage was sustained (*Levitt v. Carr* (1992), 66 B.C.L.R. (2d) 58 (C.A.) at para. 82). The cause of action accrues when the plaintiff is aware that damage has occurred and knows who the tortfeasor is (*Craig v. Insurance Corporation of British Columbia*, 2005 BCCA 275).
- [26] In this case there is no issue regarding "discoverability". That is, it was clear to the plaintiff when his claim arose. The limitation period therefore began to accrue on the dates of the incident in question, namely October 19 and 20, 2006.
- [27] The allegations of assault, kidnapping, forceful confinement, trespass, illegal search and seizure, defamation and cruel and unusual punishment are all subject to a two-year limitation period (Limitation Act, s. 3(2)(a), (b), (d) and (f)) as are the Charter breaches alleged including those relating to s. 7 and 9 of the Charter (*Bush v. City of Vancouver et al*, 2006 BCSC 1207). The specific paragraphs raising these allegations are paras. 8-22, 23-32 and 33-45 of the notice of civil claim.
- [28] Unless the running of time for these causes of action was postponed they are statute barred by the Limitation Act. Section 6(3) provides:

6

- (3) limitation periods set by this Act for any of the following actions is postponed as provided in subsection (4):
- (a) for personal injury;
 - (b) for damage to property;
 - (c) for professional negligence;
 - (d) based on fraud or deceit;

- (e) in which material facts relating to the cause of action have been wilfully concealed;
- (f) for relief from the consequences of a mistake;
- (g) brought under the Family Compensation Act;
- (h) for breach of trust not within subsection (1).

[29] Since the claims for trespass, forceful confinement and defamation are not referred to in s. 6(3) they are not capable of postponement. In light of my conclusions in this matter I need not address whether the claims for unlawful arrest and unreasonable search and seizure are capable of postponement.

[30] The plaintiff submits that the limitation period was postponed due to events related to his mental health and a period of incarceration occurring after the fall of 2006. He asserts the postponement was of sufficient length that this proceeding was commenced in time.

[31] Rule 9-6(5)(c) of the Supreme Court Civil Rules provides that on a summary judgment application, the court "if satisfied that the only genuine issue is a question of law, may determine the question and pronounce judgment accordingly, ". The initial issue therefore is whether the question of whether an action is statute barred is a question of law.

[32] In *Sime v. Jupp*, 2009 BCSC 1154, a claim that was statute barred was dismissed pursuant to now Rule 9-6(4) because the relevant facts were clear on the issue of postponement. It was not however held to be a question of law.

[33] In *Foote v. Canada (Attorney General)*, 2012 BCSC 177 at paras. 25-26, Mr. Justice Savage said:

[25] On an application under Rule 9-6(4), matters of fact cannot be weighed and inferences from the facts must be viewed in a light most favourable to the Plaintiffs: *Carnahan v. Coates* (1990), 71 D.L.R. (4th) 464, 47 B.C.L.R. (2d) 127. Arguably, it is a question of fact in each case whether the Plaintiffs' circumstances justify the application of the postponement provisions: *Bush v. City of Vancouver et al.*, 2006 BCSC 1207 at para. 40. Matters of fact or mixed fact and law are more properly dealt with by applications under Rule 9-7, if they are to be dealt with on a summary basis.

[26] In the circumstances, I am unable to conclude, as a matter of law that there is no bona fide triable issue on the question of whether the limitation period for the misfeasance in office claim is postponed.

[34] In *Walsh v. BDO Dunwood LLP*, 2013 BCSC 392 at para. 27:

[27] I start by recognizing that the question of whether a limitation period has been postponed is largely a fact-based inquiry; see *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, 2008 BCCA 278, 81 B.C.L.R. (4th) 199; *Weldon v. Agrium Inc.*, 2012 BCCA 53 at para. 24, 27 B.C.L.R. (5th) 101; *Ferrara* at para. 38.

- [35] In this instance the application cannot be disposed of under Rule 9-6 as it is not limited to a question of law. Issues of fact are at play.
- [36] Rule 9-7(5) permits a party on a summary trial application to tender evidence in a number of ways. Under a summary trial application matters of fact or mixed fact and law can be dealt with on a summary basis.
- [37] The question is whether, unlike in Foote and Walsh, the materials filed in this instance permit the necessary factual findings required to consider the postponement issue.
- [38] As noted earlier the actions of the defendants that are the subject of this action occurred on October 19 and 20, 2006. The notice of civil claim was filed on April 29, 2011.
- [39] Section 6(4) of the Limitation Act provides that the time does not begin to run until, as summarized by Mr. Justice Tysoe (as he then was) in *Ounjian v. St. Paul's Hospital*, 2002 BCSC 104 at para. 21:

[21]

1. The identity of the defendant is known to the plaintiff.
2. The plaintiff has certain facts (including the facts set out in s. 6(5)(b)) within her means of knowledge.
3. A reasonable person, knowing those facts and having taken the appropriate advice a reasonable person would seek on those facts, would regard the facts as showing that an action would have a reasonable prospect of success.
4. A reasonable person, knowing those facts and having taken the appropriate advice a reasonable person would seek on those facts, would regard the facts as showing that the plaintiff ought, in her own interests and taking her circumstances into account, to be able to bring an action.

All four of these components must be satisfied before the running of time with respect to the limitation period begins running. Thus, if a plaintiff is able to demonstrate that any one of the four components had not been satisfied before two years prior to the commencement of the action (in the case of a two year limitation period), the action will not be statute barred. ...

- [40] The onus is on the plaintiff to establish that if at least one of these conditions is not made out in order to succeed on the issue of postponement (Limitation Act, s. 6(6)).
- [41] While the plaintiff alleges he did not know who the individual officers were (arguing they failed to identify themselves at the time of his arrest and were not identified until trial), he provides no rational explanation for failing to take reasonable steps and advice to determine who the arresting officers were. Clearly a simple inquiry of the RCMP or the Crown would have produced the information.

- [42] I note that on November 2, 2006 he commenced action S067095 out of the Vancouver Registry of this Court against the Burns Lake RCMP, John Doe #1 and John Doe #2. The statement of claim in that action relates to the incident in question in this action and advances claims that appear to mirror the claims in this action. In addition on December 22, 2008 he commenced a second action, S068381 also out of the Vancouver Registry, in which he was the plaintiff and the defendant was the Ministry of Public Safety and Solicitor General. That writ of summons describes the claim as follows: "abuse of process, aggravated assault, robbery, trespass, slander, reckless disregard, mental anguish, pain and suffering, torture, immoral conduct [and] injuries" apparently relating to the same incident as the first action and this action.
- [43] With respect to the first action, S067096, the Department of Justice wrote to the plaintiff on November 14, 2006 advising him that the RCMP was not a legal entity, referring him to case authorities for that proposition, and recommending that he seek legal advice if he wished to pursue the matter noting the tort or torts alleged were unclear. The letter also suggested that he review the Police Act.
- [44] It appears the plaintiff took no further steps with respect to either action. I make no findings respecting any remedies the plaintiff may or may not have in those proceedings.
- [45] As noted earlier the plaintiff's primary submission respecting the limitation issue is that the time was postponed.
- [46] The plaintiff submits the postponement was due to a period of incarceration at the Forensic Psychiatric Hospital in Port Coquitlam, British Columbia in the spring of 2007 and the fall of 2008 as well as a period of custody, the reasons for and when, where and for how long are not in evidence although in oral submissions the plaintiff stated it was for a period of 10 months. He says as well that the resulting after effects of the medication administered to him while under treatment rendered him incapable of dealing with his claims against Burns Lake and the RCMP officers. He also refers to being forced to flee his home for several months due to alleged actions of the RCMP. However, other than limited documentation showing his time at the Forensic Psychiatric Hospital he presented no admissible evidence relating to these explanations in order to justify the postponement of the limitation period. In particular, there is no expert evidence addressing his mental capacity in 2007 and 2008. Indeed even if he was incapacitated or incarcerated during the periods he alleges such that the limitation period was postponed, commencement of the action in 2011 would still be outside the applicable limitation period for the causes of action in issue.
- [47] The Court's approach to the test for extending a limitation period is set out by Madam Justice McLachlin (as she then was), for the Court in *Novak v. Bond*, [1999] 1 S.C.R. 808:

39 The scheme and purpose of the Act leads me to conclude that the appropriate test is a variant of the second approach. Leaving aside the requirement that the identity of the defendant must be known to the plaintiff and that the provisions of s. 6(4)(a) must also be satisfied before the running of time is postponed, it is my view that the proper interpretation of s. 6(4)(b) may be summarized as follows:

Section 6(4)(b) requires the court to adopt the perspective of a reasonable person who knows the facts that are within the plaintiff's knowledge and has taken the appropriate advice a reasonable person would seek on those facts. Time does not begin to run until this reasonable person would conclude that someone in the plaintiff's position could, acting reasonably in light of his or her own circumstances and interests, bring an action. The question posed by s. 6(4)(b) therefore becomes: "in light of his or her own particular circumstances and interests, at what point could the plaintiff reasonably have brought an action?" The reasonable person would only consider that the plaintiff could not have brought an action circumstances were serious, significant, and compelling. Purely tactical concerns have no place in this analysis.

40 This approach recognizes the special problems injured persons may encounter and the intense stresses and strains involved in litigation. It recognizes that in some cases, the plaintiff's own circumstances and interests may be so compelling that it cannot be reasonably said that he or she could bring an action within the prescribed limitation period. Finally, it makes practical sense. People ought to be encouraged to take steps short of litigation to deal with their problems. They should not be compelled to sue when to do so runs counter to a vital interest, such as the need to maintain their health in the face of a life-threatening disease.

[48] The plaintiff does not meet the criteria noted in *Ounjian* for postponement of his claims. The claims advanced were all matters within the knowledge of the plaintiff on October 19, 2006 and the identities of the defendants were either known or knowable at that time. He was also well aware he could sue unknown individuals. The plaintiff should have taken the appropriate advice and did not, despite the Department of Justice having recommended he do so. I do not accept the plaintiff's written submission for failing to do so in which he stated at p. 7:

The plaintiff notes that it is not reasonable for the plaintiff to seek the advice of lawyers when supreme court justices and law school professors are reporting that ninety percent of them are incompetent. It is also not reasonable for the plaintiff to seek advice from individuals (i.e., lawyers) when the living God has warned him that he ought to avoid them.

The plaintiff was also warned that the local lawyers had been asked to notify the RCMP if the plaintiff approached them for advice, which meant another violent attack against the plaintiff.

The plaintiff should not be required to seek out or trust the advice of individuals who practice a profession that his God is not at all pleased with, and who makes very negative comments about in His Word.

- [49] As a result the events that the plaintiff alludes to subsequent to the fall of 2006, even if they were established on the evidence, are irrelevant to the issue of postponement given the initiation of the Vancouver actions established that the plaintiff had the requisite knowledge, knew that it was the RCMP members he was suing, and reasonably should have taken the requisite advice and either reinitiated or amended one of the Vancouver actions.
- [50] As a result I dismiss the claims for assault, kidnapping, forceful confinement, trespass, illegal search and seizure, defamation and cruel and unusual punishment set out in the paras. 8-22, 23-32, and 33-45 of the notice of civil claim.
- [51] This leaves two remaining claims, those being the allegation of sexual assault and the allegation of malicious prosecution. With respect to the latter it is not disputed that the notice of civil claim filed on April 29, 2011 in this action was filed in time given the criminal proceedings. However it is disputed that the allegation of malicious prosecution is properly pleaded. The allegation of sexual assault raises two issues: do the pleadings plead the issue of a sexual assault and, if they do, what limitation period applies? I shall address the limitation issue now with the pleading issues to be addressed later in these reasons.
- [52] With respect to the allegation of assault he alleges they punched him in the genitals and as a result also committed a sexual assault that he submits is not subject to the two-year limitation period.
- [53] The Limitation Act provides that a sexual assault is not governed by a limitation period. (s. 3(4)(k), (D.E. (Guardian ad litem) v. British Columbia, 2005 BCCA 134).
- [54] As a result the plaintiff's claims for malicious prosecution and sexual assault were not out of time when this action was commenced. This leads to a consideration of the pleadings and the defendants' application to strike.

Pleadings

- [55] The defendants seek to strike the plaintiff's pleadings pursuant to Rule 9-5(1) as disclosing no reasonable claim or as unnecessary, scandalous, frivolous or vexatious. Such an application assumes that the facts alleged can be proven. It is only if no reasonable cause of action is disclosed that the pleadings should be struck. (Hunt v. Carey Canada Inc., [1990] 2 SCR 959 at p. 980 and R. v. Imperial Tobacco Canada Ltd., 2011 SCC 42, [2011] 3 S.C.R. 45 at para. 22).
- [56] In Imperial Tobacco the Supreme Court of Canada said this regarding the striking of claims:
- [19] The power to strike out claims that have no reasonable prospect of success is a valuable housekeeping measure essential to effective and fair litigation. It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go on to trial.

- [20] This promotes two goods -- efficiency in the conduct of the litigation and correct results. Striking out claims that have no reasonable prospect of success promotes litigation efficiency, reducing time and cost. The litigants can focus on serious claims, without devoting days and sometimes weeks of evidence and argument to claims that are in any event hopeless. The same applies to judges and juries, whose attention is focused where it should be -- on claims that have a reasonable chance of success. The efficiency gained by weeding out unmeritorious claims in turn contributes to better justice. The more the evidence and arguments are trained on the real issues, the more likely it is that the trial process will successfully come to grips with the parties' respective positions on those issues and the merits of the case.
- [22] A motion to strike for failure to disclose a reasonable cause of action proceeds on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven: *Operation Dismantle Inc. v. The Queen*, [1985] 1 S.C.R. 441, at p. 455. No evidence is admissible on such a motion: r. 19(27) of the Supreme Court Rules (now r. 9-5(2) of the Supreme Court Civil Rules). It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The claimant may not be in a position to prove the facts pleaded at the time of the motion. It may only hope to be able to prove them. But plead them it must. The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted.
- [57] At para. 13 in *Sime*, Mr. Justice Powers accepted the following propositions from the defendants' submissions:
- [13]
19. In *Dempsey v. Envision Credit Union*, Madam Justice Garson summarizes the law on Sub-Rules 19(24(b)(c) and (d) and extracts general propositions from the authorities concerning the circumstances under which pleadings will be struck. A pleading will be struck out if:
- (a) the pleadings are unintelligible, confusing and difficult to understand (*Citizens for Foreign aid Reform*, *supra*);
 - (b) the pleadings do not establish a cause of action and do not advance a claim known in law (*Citizens for foreign aid Reform*, *supra*);
 - (c) the pleadings are without substance in that they are groundless, fanciful and trifle with the Court's time (*Borsato v. Basra*);
 - (d) the pleadings are not bona fides, are oppressive and are designed to cause the Defendants anxiety, trouble and expense (*Borsato v. Basra*, *supra*);
 - (e) the action is brought for an improper purpose, particularly the harassment and oppression of the defendants (*Ebrahim v. Ebrahim*, 2002 BCSC 466).

Dempsey v. Envision Credit Union, 2006 BCSC 750 para 17

20. Failure to properly particularize claims in defamation may amount to a failure to disclose a reasonable claim under 19(24)(a). Irrelevant allegations against a defendant may be struck under 19(24)(b) and (c) as unnecessary, scandalous, frivolous or vexatious.

Strauts v. Harrigan [1992] B.C.J No. 86

21. Sub-Rule 19(24)(d) allows pleadings to be struck where they are an abuse of the process of the court. Abuse of process is a flexible doctrine that allows the court to prevent a claim from proceeding where it "violates such principles as judicial economy, consistency, finality and the integrity of the administration of justice".

Dempsey v. Envision Credit Union, 2006 BCSC 750, para 9, citing Toronto (City) v. C.U.P.E., Local 79, [2003] 3 S.C.R. 77 (S.C.C.) para 37

22. Claiming the same relief in two separate actions is vexatious and an abuse of process.

Great Pacific Contracting Ltd. V. Harwyn Properties, 29 B.C.L.R. 145, 21 C.P.C. 280, paras 11-13

23. Pleadings that are so prolix or confusing that it is difficult, if not impossible, to understand the case to be met should be struck, since they prevent the Defendant from knowing the case it has to meet. Amendment will be permitted for those claims that are capable of being remedied, but proposed claims which are without legal foundation should be dismissed.

Extra Gift Exchange Inc. v. Ernest & Twins Ventures (PP) Ltd., 2007 BCSC 426, paras 18, 19 and 22

- [58] The notice of civil claim filed April 29, 2011 consists of 67 paragraphs and subparagraphs and 18 pages quoting liberally from the Magna Carta, the "1689 Bill of Rights", the "Petition of Rights 1628" and the Canadian Charter of Rights and Freedoms. The response of Burns Lake is a mere six pages yet has prompted the plaintiff to file a reply consisting of 295 pages plus another 150 or so pages of what he describes as exhibits.
- [59] Some examples from the plaintiff's notice of civil claim are noted by the defendants and will suffice to establish its deficiencies:
- a) Paragraph 9 -- wherein the plaintiff claims the defendants MacKellar and Ferris did "deceptively sneak" and that they "banged violently and furiously";
 - b) Paragraph 12 -- wherein the plaintiff describes the defendants MacKellar and Ferris as the "kidnapping defendants";
 - c) Paragraph 20 -- wherein the plaintiff describes the defendants MacKellar and Ferris' employers as "a standing army known as the Royal Canadian Mounted Police";

- d) Paragraph 29 -- wherein the plaintiff refers to the defendant as stating in an evil tone, "Don't fucking look at me".
- e) Paragraph 29(iv) -- wherein the plaintiff describes his position as "execution style" and refers to an alleged "murder" not in any way connected to the case at hand and refers to the defendants as the "terrorist kidnapping defendants";
- f) Paragraph 30 -- wherein the plaintiff again describes the defendants MacKellar and Ferris' employers as "a standing army known as the Royal Canadian Mounted Police";
- g) Paragraph 34 -- wherein the plaintiff describes the defendants breaching the plaintiffs "god-given" rights and described the defendants' offering the plaintiff a "despicable contract offer";
- h) Paragraph 37 -- wherein the plaintiff describes the defendants as "thieves", describes his right to his property as "granted by God, the Creator of the universe ... alleged to be illegal under de facto law" then guaranteed";
- i) Paragraph 38 -- wherein the plaintiff again refers to the defendants employer as a "standing army known as the Royal Canadian Mounted Police during times of peace in the commonwealth Dominion of Canada";
- j) Paragraph 41 -- wherein the plaintiff describes the defendant Wamstecker's request that the plaintiff stay in his presence at all times as a "disgusting absurdity";
- k) Paragraph 45 -- wherein the plaintiff describes the actions of the defendants as a deprivation of "God-given and constitutionally given rights";
- l) Paragraph 46 -- wherein the plaintiff refers to the defendants employers as a "standing army known as the Royal Canadian Mounted Police during times of peace in the commonwealth Dominion of Canada";
- m) Paragraph 49 -- wherein the plaintiff describes the RCMP "militarily trained and a militarily punished, de facto 'police' presence which resembles and whose actions are those of a standing army rather than legitimate police", the plaintiff further describes the RCMP members in Burns Lake as a group of "dumbed down (re: public school training) and armed individuals who have no knowledge of the laws of the Dominion of Canada (which recognizes God as the supreme authority), which constitutes a dangerous threat to the well-being of every individual who exercises his/her God-given and constitutionally guaranteed rights anywhere near an R.C.M.P. member", the plaintiff goes on to say that the "military 'police' (R.C.M.P.) members do terrorize on a daily basis in the name of enforcing de facto and constitutionally invalid law";
- n) Paragraph 51 -- wherein the plaintiff states that the defendant, the Village of Burns Lake, is a "first stop" for RCMP recruits "who arrive untrained [except for military training], unknowledgable [except for military training], and very incapable of doing any real police work through their ignorance of the law and lack of proper training" and that they "cause

many more problems than they ever solve" the plaintiff claims that there is an over abundance of RCMP officers and that it appears "to be for the use and purpose of continuing Canada's theft of land, and the secret [not secret any longer] genocide of the indigenous peoples of the land whom God gave dominion to, and for the purpose of proceeding with the protocols agenda for a new world order (one world government) under the United Nations (which when looking at the facts, is a satanic cult);

- o) Paragraph 52 -- wherein the plaintiff describes the acts of the defendants as carried out under custom, practice, policy, rules, regulations and colors of (de facto) state and federal law.

[60] If I am wrong in my findings that the majority of the claims are statute barred in my view the pleadings suffer from numerous defects. They are unnecessary and embarrassing in that it is difficult to understand what is pleaded and much of what is pleaded is irrelevant to the real issues. They are also prolix and confusing, contain excessive pleading of evidence, argument and opinion, and require such extensive amendment that complete redrafting is required. The reply, in addition to similar infringements of the rules of pleadings, is largely incomprehensible.

[61] With respect to the allegation of sexual assault the notice of civil claim simply states that the plaintiff was struck on his "stomach, ribs and genitals". While that is an allegation of assault it is not an allegation of sexual assault.

[62] A sexual assault is not established simply by "contact with specific areas of the human anatomy" (R. v. Chase (1987), 37 C.C.C. (3d) 97 at p. 102). Mr. Justice McIntyre for the Court at pp. 103-104 said:

... Sexual assault is an assault within any one of the definitions of that concept in s. 244(1) of the Criminal Code which is committed in circumstances of a sexual nature, such that the sexual integrity of the victim is violated. The test to be applied in determining whether the impugned conduct has the requisite sexual nature is an objective one: "Viewed in the light of all the circumstances, is the sexual or carnal context of the assault visible to a reasonable observe[r]?" (Taylor, *supra*, per Laycraft C.J.A., at p. 162 C.C.C., p. 269 C.R.). The part of the body touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act, and all other circumstances surrounding the conduct, including threats which may or may not be accompanied by force, will be relevant: see S.J. Usprich, "A New Crime in Old Battles: Definitional Problems with Sexual Assault" 29 *Crim. L.Q.* 200, at p. 204. The intent or purpose of the person committing the act, to the extent that this may appear from the evidence may also be a factor in considering whether the conduct is sexual. If the motive of the accused is sexual gratification, to the extent that this may appear from the evidence it may be a factor in determining whether the conduct is sexual. It must be emphasized, however, that the existence of such a motive is simply one of many factors to be considered, the importance of which will vary depending on the circumstances.

- [63] In *Ross v. British Columbia (Public Safety)*, 2009 BCSC 1811, Mr. Justice Schultes summarized the test for striking a pleading under the then Rule 19(24)(a) as follows:
- [13] A court may only strike a statement of claim pursuant to Rule 19(24)(a) when it is "plain and obvious" that the claim cannot succeed: *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.J. No. 93 at paragraph 33. In determining whether this test has been met the court must assume that the facts in the statement of claim are true and that the case for the plaintiff is taken at its highest: *Canadian Bar Association v. British Columbia* (2008), 76 B.C.L.R. (4th) 48 (C.A.). However, the court is not required to assume the truth of allegations that are incapable of proof: *Operation Dismantle v. The Queen*, [1985] 1 S.C.R. 441 at 455.
- [14] As long as the pleadings disclose a triable issue, either as it exists or as it may be amended, the issue should go to trial: *Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Congress*, [1999] B.C.J. No. 2160 (S.C.) 34. A court is obliged to read the statement of claim as generously as possible and to accommodate any inadequacies in the form of the allegations which are merely the result of drafting deficiencies: *Operation Dismantle*, at page 451. This is particularly important in the case of a self-represented plaintiff.
- [15] Pursuant to Rule 19(27), no evidence is admissible in an application under Rule 19(24)(a).
- [64] The pleadings fail to plead any facts to establish a sexual motive nor other facts in support of such a plea. Indeed, despite the voluminous information contained in the materials before the court the material facts are completely absent. This is not in my view simply a drafting deficiency. The allegation of sexual assault is therefore struck.
- [65] With respect to the claim for malicious prosecution, at best it only appears that it is a claim the plaintiff wishes to bring. The pleadings fail to plead the four elements required for such a claim. That is, the pleadings fail to state the following:
- a) The proceedings must have been initiated by the defendants;
 - b) They must have terminated in favour of the plaintiff;
 - c) There was no objectively reasonable and probable grounds to believe that proof beyond a reasonable doubt could be made out in a court of law;
 - d) The prosecution was initiated and/or continued for an improper purpose or actuated by malice.
- (*Maizga v. Kvello Estate*, 2009 SCC 51, [2009] 3 S.C.R. 339, paras. 52, 56, 79-81; *Nelles v. Ontario*, [1989] 2 S.C.R. 170)
- [66] As a result I give the plaintiff 60 days to amend the pleadings to particularize the pleading of malicious prosecution. Given the general state of the pleadings and the results of this application, amendment must be made by way of filing of an entirely new notice of civil claim. If he fails to do so the claim for malicious prosecution is dismissed. If the new pleadings are deficient the defendants have liberty to apply.

[67] As requested, if the parties are unable to agree on costs they have liberty to apply.

"Punnett J."

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