

CANADA / JUDGMENT

Fraser v. Weisbeck

2025 BCSC 2397

COURT

Supreme Court of British Columbia

DECIDED

3 December 2025

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2025 BCSC 2397 Fraser v. Weisbeck

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Fraser v. Weisbeck,

2025 BCSC 2397

Date: 20251203

Docket: S63277

Registry: Kamloops

Between:

Kenneth Edwin Bryan Fraser

Plaintiff

And

Fr. Fred Weisbeck, Scott Huyghebaert and Bishop Joseph P. Nguyen

Roman Catholic Diocese of Kamloops

Defendants

Before: The Honourable Justice Hewson

Reasons for Judgment

The Plaintiff appearing on his own behalf:

K.E.B. Fraser

Counsel for the Defendants, Fr. Fred Weisbeck, Bishop Joseph P. Nguyen and Roman Catholic
Diocese of Kamloops:

S.M.M. McConnell

Counsel for the Defendant,

Scott Huyghebaert:

L. Nykolaychuck

Place and Date of Hearing:

Kamloops, B.C.

August 28, 2025

Place and Date of Judgment:

Kamloops, B.C.

December 3, 2025

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- [1] This is a ruling on a chambers' application in Kamloops Supreme Court.
- [2] The applicant (plaintiff) is Mr. Kenneth Fraser. The respondents (defendants) are Father Fred Weisbeck, Mr. Scott Huyghebaert, Bishop Joseph Nguyen and the Roman Catholic Diocese of Kamloops.

Background

- [3] Mr. Fraser is a parishioner at St. Joseph's Roman Catholic Church in Salmon Arm, BC (the "Church"). The Church is part of the Roman Catholic Diocese of Kamloops. Father Fred Weisbeck is the pastor at the Church. He is also the Vicar General of the Diocese and the Diocesan Misconduct Policy Administrator. Bishop Joseph Nguyen is the Bishop of the Roman Catholic Diocese of Kamloops.
- [4] In March 2023, the finance committee at the Church reported that parish donations had declined and that the Church had a \$10,000 deficit. The committee invited feedback. On April 18, 2023, Mr. Fraser responded to the call for feedback by writing a letter to the committee. The letter was several pages long. At one point, Mr. Fraser wrote:

Some parishioners stopped donating money to St. Joseph's because, when these parishioners needed their church the most, they felt denigrated, misconstrued, or slandered by their staff, priests, and bishop.

- [5] The Church construed this statement as an allegation and commenced an investigation. Mr. Huyghebaert, a lawyer, was retained to conduct the investigation.
- [6] On June 10, 2023, after the investigation had begun, Mr. Fraser wrote a letter to members of the parish community asking for input and guidance regarding the investigation. He enclosed a copy of the letter he had written on April 18, 2023.
- [7] The investigation was concluded, and a report was produced. The report concluded that Mr. Fraser's complaint was unfounded.
- [8] On July 2, 2023, a bulletin regarding the complaint and the investigation was distributed in print and posted to the parish website.
- [9] Later in July 2023, Mr. Fraser was advised that he was no longer welcome to participate in certain voluntary roles at the Church, including the presentation of offertory gifts and the coordination and provision of hospitality after mass.

- [10] Mr. Fraser wrote a second letter dated August 6, 2023, addressed to his friends in the parish community. In this letter, Mr. Fraser shared his perspective on the statements in his April letter, the investigation, and the outcome of the investigation.
- [11] On August 10, 2023, Father Weisbeck, Bishop Nguyen, and Mr. Huyghebaert held a meeting at the Church regarding the investigation. The meeting was open to members of the parish.
- [12] Mr. Fraser claims that he was defamed both in print and during the meeting on August 10, 2023. He further claims that Bishop Nguyen and the Diocese are vicariously liable for the acts of Father Weisbeck. He alleges that all four defendants owed him a duty of care, a duty of confidentiality, and fiduciary duties. He alleges that they made fraudulent misrepresentations, and that they inflicted emotional distress on him, either intentionally or negligently. He further alleges that they violated his privacy and were parties to a civil conspiracy.

History of Pleadings

- [13] Mr. Fraser drafted his pleadings with the assistance of counsel. After Mr. Fraser filed his notice of civil claim, he amended it once and now seeks to amend it a second time. He has had the benefit of the assistance of counsel with respect to each draft. Each version of the claim is different, as the claims made have developed over time. The history of the pleadings is set out below.
- [14] Mr. Fraser filed his first notice of civil claim on June 12, 2024. The causes of action pleaded were:
- a) Negligence;
 - b) Defamation;
 - c) Breach of good faith and fair dealing;
 - d) Breach of duty to investigate;
 - e) Vicarious liability;
 - f) Breach of undertaking;
 - g) Breach of privacy, and
 - h) Misrepresentation.
- [15] Father Fred Weisbeck, Bishop Nguyen, and the Roman Catholic Diocese of Kamloops filed their response to the civil claim on July 17, 2024.
- [16] Scott Huyghebaert filed his response to civil claim on July 18, 2024.
- [17] Mr. Fraser filed his first amended notice of civil claim ("ANOCC") on September 19, 2024. The causes of action pleaded now were:

- a) Negligence;
- b) Defamation;
- c) Intentional infliction of emotional distress, and
- d) Vicarious liability.

[18] The ANOCC is very lengthy, partly because it included many paragraphs from the original notice of civil claim with all the text struck through to indicate the text had been deleted. The statement of facts included in Part 1 of the claim is entirely rewritten.

[19] Father Fred Weisbeck, Bishop Nguyen, and the Roman Catholic Diocese of Kamloops filed an amended response to civil claim on October 9, 2024. Scott Huyghebaert filed an amended response to civil claim on January 28, 2025.

[20] On January 30, 2025, Mr. Huyghebaert filed an application seeking, among other relief, to strike the claims of negligence and intentional infliction of emotional distress from the ANOCC, and for an order requiring Mr. Fraser to plead particulars of defamation. This application was set to be heard in the week of June 23, 2025. It has since been adjourned generally.

[21] Mr. Fraser filed this application on June 7, 2025. The application materials included the proposed second amended claim ("proposed Second ANOCC"), which is over 100 pages in length with schedules. The proposed Second ANOCC adds eight additional causes of action to the ANOCC and pleads, in its totality:

- a) Vicarious liability;
- b) Negligence (including professional and gross negligence);
- c) Breach of confidence;
- d) Breach of confidentiality;
- e) Breach of fiduciary duty of care;
- f) Fraudulent misrepresentation;
- g) Libel;
- h) Slander;
- i) Violation of privacy;
- j) Intentional infliction of mental distress;
- k) Negligent infliction of mental distress, and
- l) Civil conspiracy.

[22] The proposed Second ANOCC represents a wholly amended version of the claim, which would replace the previous claim in its entirety. It is lengthy. The statement of facts is 164 paragraphs long and takes up over twenty-two pages. There is a mixture of material facts, evidence and background facts. Some examples of evidence or background facts included in the proposed Second ANOCC are:

- a) For example, as families were arriving at church one Sunday morning (November 21, 2021), a man employed by St. Joseph's berated parishioners and - over a microphone - compared them to Al Qaeda terrorists. The staff member issued an alarming ultimatum to the pastor, threatened to compel police involvement and news coverage, and effectively forced the pastor to cancel the Sunday service before it began.

...

- 16. In light of these challenges, Mr. Fraser's April Letter offered some ways to help rebuild relationships in the faith community and welcome back parishioners who felt hurt and frustrated during (and following) the time of Covid-19.

...

- 26. Mr. Fraser stated that the remark in his April Letter was an observation (not an allegation) shared by many people in the parish community. In fact, from 2021 to present, parishioners informed the Church Defendants in writing - at least 10 times - that they felt slandered, bullied and/or harassed by Diocesan staff. Mr. Fraser's "allegation" was one among many.

(Emphasis in the original.)

[23] There are many other, similar examples.

[24] In addition to the proposed Second ANOCC, Mr. Fraser seeks to rely on two schedules to supplement it. The first is titled "Libel and Slander Particulars" and the second titled "Negligence Particulars". Together, the two schedules add almost one hundred additional pages.

Application

[25] Mr. Fraser now applies for the following orders:

- a) Leave to amend his ANOCC;
- b) That the cost of this application be in the discretion of the court; and
- c) Such further and other relief as this court may deem just and appropriate.

Respondents' Positions

- [26] Mr. Huyghebaert is opposed to any amendment other than the proposed amendment to the claim of defamation. In the alternative, he submits that if leave to amend is granted, it should be granted on terms like those set out in the order in *Kepa v. Catlin*, 2021 BCSC 1960, which were further considered in *Kepa v. Catlin*, 2024 BCSC 1293, and then the subject of consideration again in *Kepa v. Catlin*, 2025 BCCA 307.
- [27] Father Weisbeck, Bishop Nguyen, and the Roman Catholic Diocese of Kamloops are not opposed to the application for leave to amend with respect to the claims in defamation and vicarious liability. They oppose the remaining relief sought by Mr. Fraser.

Law - Applications to Amend Pleadings

- [28] The object of the Supreme Court Civil Rules, B.C. Reg. 168/2009 and the principle of proportionality are set out in Rule 1-3. This object and this principle illuminate the interpretation of the balance of the rules that follow.

Object

- (1) The object of these Supreme Court Civil Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits.

Proportionality

- (2) Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to
- (a) the amount involved in the proceeding,
 - (b) the importance of the issues in dispute, and
 - (c) the complexity of the proceeding.

- [29] Mr. Fraser relies on Rule 6-1(1), which provides:

- (1) Subject to Rules 6-2(7) and (10) and 7-7(5), a party may amend the whole or any part of a pleading filed by the party, other than to change parties or withdraw an admission,
 - (a) once without leave of the court, at any time before service of the notice of trial, or
 - (b) after the notice of trial is served, only with
 - (i) leave of the court, or
 - (ii) written consent of the parties.

[en. B.C. Reg. 120/2014, s. 3; am. B.C. Reg. 104/2019, s. 1.]

- [30] Pursuant to this Rule, a party may amend pleadings once without leave of the court at any time before service of the notice of trial. However, where a party proposes to file a second amended notice of civil claim, leave of the court is required.
- [31] Pleadings are foundational to the litigation process. They support the underlying objectives of the Rules. The core of the process of pleadings is the notice of civil claim. It must comply with Rule 3-7 of the Supreme Court Civil Rules and must provide the following basic information:
- (a) a concise statement of the material facts giving rise to the claim;
 - (b) the relief sought by the plaintiff against each named defendant;
 - (c) a concise summary of the legal basis for the relief sought;
 - (d) the proposed place of trial, and
 - (e) the information required in the appendix to the form.
- [32] The role of pleadings is to define the issues of fact and law for the court to decide. They must specifically state material facts in an organized way to assist the court in understanding the issues in the case. See generally: *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362 at paras. 20-23.
- [33] The pleadings determine what is relevant at the discovery stage. Proper pleadings ensure that parties produce relevant documents and explore relevant issues at examinations for discovery. They serve to guide the litigation process through interlocutory applications and the trial itself.
- [34] Material facts are the elements necessary to formulate a claim or defence. For the court to fairly decide the issues, the pleadings must state a material fact simply. At trial, a party will call evidence to prove each material fact necessary to establish a cause of action. However, it is not necessary, nor is it permitted, to include evidence in the pleadings themselves (Rule 3-7(1)). A notice of civil claim is not a story: *Mercantile Office Systems*, at para. 44.
- [35] Mr. Fraser cites the decision of Mr. Justice G.P. Weatherill in *Peterson v. 446690 B.C. Ltd.*, 2014 BCSC 1531, for the general principles governing an application to amend pleadings. At para. 37, the Court summarized the principles as follows:
- (a) Amendments to pleadings ought to be allowed unless the pleadings fail to disclose a cause of action or defence: *McNaughton v. Baker* (1988), 25 B.C.L.R. (2d) 17 (C.A.).
 - (b) Amendments are usually permitted to determine the issues between the parties and ought to be allowed unless they would prejudice a party's ability to defend the action: *Levy v. Petaquilla Minerals Ltd.*, 2012 BCSC 776.

- (c) The party resisting an amendment must prove prejudice to preclude the amendment. Mere potential prejudice is insufficient: *Jones v. Lululemon Athletica Inc.*, 2008 BCSC 719 (In Chambers).
 - (d) Costs are the general means of protecting against prejudice unless they would be a wholly inadequate remedy.
 - (e) Courts should only disallow an amendment as a last resort: *Jones; McNaughton; Innoventure S & K Holdings Ltd. v. Innoventure (Tri-Cities) Holdings Ltd.*, 2006 BCSC 1567.
- [36] Mr. Fraser also cites the decision of Mr. Justice Davies in *British Columbia (Director of Civil Forfeiture) v. Violette*, 2015 BCSC 1372, where the Court stated at para. 40:
- [40] Applications for leave to amend pleadings are considered on the same basis as applications to strike pleadings, with the question being whether it is plain and obvious that the proposed amendments are bound to fail. In assessing that question, it is not determinative that the law has not yet recognized a particular claim. In its analysis, the court must be generous and err on the side of permitting an arguable claim to proceed to trial. See: *McMillan v. McMillan*, 2014 BCSC 546 at paras. 13-14, and cases cited therein.
- [37] Finally, Mr. Fraser relies on the principle that, on a motion to strike, the court is not deciding on the plaintiff's chances of success. It is enough that the plaintiff has some chance of success. Striking out cannot be justified because a pleading reveals "an arguable, difficult, or important point of law." On the contrary, it may be critical that the action be allowed to proceed: *Hunt v. Carey Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959; *Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Congress*, 1999 CanLII 5860 (BCSC); *Minnes v. Minnes*, 1962 CanLII 350 (BCCA).
- [38] Although Mr. Fraser had the assistance of counsel in drafting his pleadings, he appeared on his own behalf without counsel on this application. The situation of self represented litigants must be taken into consideration, particularly when they are called upon to argue law with which they may not be familiar.
- [39] None of the four defendants dispute the generally applicable law as set out by Mr. Fraser. However, they emphasize that the court should not sanction amendments which violate the rules that govern pleadings, including the prohibition of pleadings which disclose no reasonable cause of action. In considering this question, the same tests and considerations applicable on an application to strike claims apply. See: *Chouinard v. O'Connor*, 2011 BCCA 121 at para. 13. The over-riding consideration is what is just and convenient. See: *Teal Cedar Products (1977) Ltd. v. Dale Intermediaries Ltd.* (1996), 19 B.C.L.R. (3d) 282 (C.A.)

[40] Taken together, the authorities establish that leave to amend pleadings will generally be granted unless it is plain and obvious that the proposed amendment is bound to fail. The court's approach is generous, erring on the side of permitting arguable claims to proceed so that disputes can be resolved on their merits. Amendments may only be denied where they disclose no cause of action, where they would result in actual prejudice for which costs are a wholly inadequate remedy, or where they would otherwise constitute an abuse of process.

Analysis

- [41] The defendants either consent to or do not strenuously oppose amendments to the claims in defamation or vicarious liability, which is a reasonable position to take. There will be an order granting Mr. Fraser leave to amend the ANOCC with respect to his claims in defamation and vicarious liability, in accordance with certain terms intended to ensure that the amendments comply with the rules regarding pleadings.
- [42] The balance of the amendments that Mr. Fraser seeks to make require a more searching analysis.
- [43] The real question and issues between the parties is whether words published and said by the defendants about Mr. Fraser were defamatory, and whether the investigation into his complaint of misconduct by the bishop, the priest and the staff and agents of the parish was tortious and caused him compensable harm.
- [44] The delay in bringing his application to amend is not extensive. The degree of prejudice caused by the delay is not great.
- [45] The heart of the defendants' opposition to Mr. Fraser's application for leave to amend is that, in the defendants' view, the proposed amendments do not comply with the rules of pleading. Since an application for leave to amend should be considered on the same basis as an application to strike existing pleadings pursuant to Rule 9-5(1), the defendants submit that the proposed amendments should not be allowed because it is plain and obvious that they would be struck out if they had been included in the original pleading.
- [46] I will address each of Mr. Fraser's proposed amended claims in turn. For the sake of brevity, where the specific issues raised by two or more claims are the same, I will address them together.

Libel, slander and vicarious liability

- [47] Mr. Fraser seeks leave to amend those parts of his ANOCC that raise claims of defamation including libel and slander, and those parts of his ANOCC that raise claims that the Diocese and Bishop Nguyen are vicariously liable for the actions of Pastor Weisbruck. Given the positions taken by the defendants and the law with respect to applications to amend, as set out above, it is appropriate to grant leave to amend those parts of the ANOCC. However, the amendments must specifically state the material facts in an organized way to assist the

defendants and the court in understanding the issues in the case. I will return to this condition, below.

Negligence in the investigation (including professional and "gross negligence")

- [48] In his proposed Second ANOCC, Mr. Fraser claims against all defendants that they acted negligently in pursuing an investigation. It is plain and obvious that this claim is bound to fail, for two reasons. First, there was no duty of care between any of the defendants and the plaintiff because there was not a sufficient degree of proximity between them. See: for example, *Dawson v. Vancouver Coastal Health Authority*, 2021 BCSC 2060. Moreover, there were no special circumstances creating a duty of care between counsel for the defendants, Mr. Huygebaert, and Mr. Fraser. Second, it was not reasonably foreseeable that harm, whether mental distress or loss of income, would be caused by investigating a public allegation, or by reporting the result of an investigation into a public allegation, or by requiring a temporary break in Mr. Fraser's voluntary participation in activities at the Church. In *Dawson*, the Court cited the decision of the Supreme Court of Canada in *Mustapha v. Culligan Canada Ltd.*, 2008 SCC 27 at para. 9, where that Court wrote
- [9] . . . The law does not recognize upset, disgust, anxiety, agitation or other mental states that fall short of injury. I would not purport to define compensable injury exhaustively, except to say that it must be serious and prolonged and rise above the ordinary annoyances, anxieties and fears that people living in society routinely, if sometimes reluctantly, accept. . . .
- [49] Leave to amend the claim of negligence already advanced in the filed ANOCC is denied.

Negligent statements or publication

- [50] This claim is bound to fail, first because there was no duty of care as discussed above, and second because it was not reasonably foreseeable that harm would be caused by announcing the conclusions of an investigation into the basis for Mr. Fraser's public statement. His identity as the author of the statement that generated the investigation was public information. According to his pleadings, Mr. Fraser himself made public his identity as the person responsible for the statement. These claims are bound to fail. In any event, these claims are unnecessary given the claim of defamation. As the plaintiff put it in his notice of application, the claims were already there, albeit nascently.

Fraudulent misrepresentation, or in the alternative negligent misrepresentation

- [51] Mr. Fraser claims that Mr. Huygebaert made certain direct and indirect representations to induce Mr. Fraser to provide information about his intentions, motives, concerns and misgivings, and that Father Weisbeck misrepresented himself as an impartial party. To establish the claim of fraudulent misrepresentation, Mr. Fraser must establish that the representation caused him to act. See: *Hamilton v. Callaway*, 2016 BCCA 189 at para. 25. It is plain and obvious that this claim is bound to fail, for two reasons. First, in his own

pleadings, Mr. Fraser makes it clear that he did not rely on representations that were made by Mr. Huygebaert. Instead, he pleads that he declined to be interviewed in person because of other advice he received. Second, Mr. Fraser knew that Father Weisbeck was the person his complaint was directed at. He could not have then relied upon the same person to be an impartial party. There was no "special relationship" between the two parties, and the existence of a "special relationship" is an element of the claim. See: *Queen v. Cognos Inc.*, [1993] 1 SCR 87 (SCC) at para. 34. This claim is bound to fail.

- [52] Leave to raise claims of fraudulent misrepresentation or negligent misrepresentation in a further ANOCC is denied.

Intentional infliction of mental distress, and negligent infliction of mental distress

- [53] The claim of intentional infliction of mental distress depends upon proof of elements including conduct that was flagrant, outrageous or extreme. See: *Pinkerton v. Victoria Saanich Canadian Dressage Owners and Riders Society*, 2020 BCSC 1838 at para. 59. The conduct identified by Mr. Fraser was investigating public statements made by Mr. Fraser about other people, making public information about that investigation, and holding a public meeting to discuss the process and the conclusions. None of that conduct could be described as flagrant, outrageous or extreme. The claim of intentional infliction of mental distress is bound to fail.
- [54] Leave to amend the ANOCC by raising intentional infliction of mental distress is denied.
- [55] Mr. Fraser also seeks to amend a claim for negligent infliction of mental distress. This claim is bound to fail because there was no duty of care between Mr. Fraser and the defendants, for the same reasons set out previously in the analysis of his negligent investigation claim.

Breach of confidence

- [56] Mr. Fraser next claims damages for breach of confidence. To prove a breach of confidence, he must establish that the information had the necessary quality of confidence about it, that the defendant was obliged to keep the information confidential, and that the defendant made unauthorized use of the information to Mr. Fraser's detriment. See: *Grosz v. Guo*, 2020 BCSC 997 at para. 50; *Doe 464533 v. D.(N.)*, 2016 ONSC 541 at para. 21.
- [57] To be confidential, information must not be something which is public knowledge. Again, according to his pleadings, Mr. Fraser himself distributed copies of his statement and made public his identity as the person responsible for it. To the extent that the defendants shared information about their investigation, it was a permitted use of confidential information. Information was not misused. Finally, Mr. Fraser does not plead that any disclosure of the information was to his detriment. It is clear and obvious that this claim is bound to fail.

Breach of fiduciary duty of care

- [58] Mr. Fraser claims that Mr. Huyghebaert, a lawyer acting for the defendants, owed him a fiduciary duty. He relies on the Legal Profession Act, SBC 1998, c. 9 and the Investigators Act, and the Security Services Act. The latter two acts are not cited, but Mr. Fraser may be referring to the Security Services Act, SBC 2007, c. 30.
- [59] In order to establish an ad hoc fiduciary duty, Mr. Fraser must prove not only vulnerability arising from the relationship but also an undertaking by the alleged fiduciary to act in Mr. Fraser's best interests, among other things. See: *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24 at para. 36.
- [60] Mr. Huyghebaert was, according to Mr. Fraser's pleadings, at all material times acting as an investigator. There was no undertaking to act in the best interest of Mr. Fraser. Such an undertaking is required, even in a relationship such as the relationship between a clergyman and a parishioner. The absence of such an undertaking will be fatal to the claim against Mr. Huyghebaert of an ad hoc fiduciary duty of care.
- [61] Mr. Fraser asserts that Mr. Huyghebaert owed him a fiduciary duty under the Security Services Act. Assuming for present purposes that that assertion might be correct, s. 34(1) of that Act provides that the registrar must deal with complaints from the public respecting matters that relate to that Act. This Court has no jurisdiction.
- [62] Mr. Fraser claims that Father Weisbeck breached his confidence by disclosing to third parties Mr. Fraser's identity as the individual who made the statement and by sharing the contents of the voicemail with Mr. Huyghebaert. Again, his identity as the statement maker was well known because of Mr. Fraser's own actions, and sharing the contents of a voicemail with a lawyer retained to investigate the statements was a permitted use of information.
- [63] This claim has no reasonable basis against any defendant and is bound to fail.

Violation of privacy

- [64] Mr. Fraser says Father Weisbeck "approved" a document that summarized the discussion at a private committee meeting. The document was written by two other people, not named as defendants. It included comments attributed to a third person who was said to be a psychologist or a medical doctor. That person was reported to have thought that Mr. Fraser had a probable diagnosis of narcissism.
- [65] Mr. Fraser relies on the Privacy Act, RSBC 1996, c. 373.

[66] The nature and degree of privacy to which a person is entitled in relation to a matter is that which is reasonable in the circumstances. The proposed Second ANOCC does not plead that Mr. Fraser had a reasonable expectation of privacy. Again, the fact that he was the author of the statement was a fact that he made public. Nor does the proposed Second ANOCC claim that the breach of privacy occurred without claim of right, which is an honest belief in a state of facts which, if it existed, would be legal justification or excuse.

[67] It is clear and obvious that this claim must fail.

Civil conspiracy

[68] Finally, Mr. Fraser claims that the defendants engaged in a civil conspiracy to damage him.

[69] To bring a claim for civil conspiracy, Mr. Fraser must plead, among other things, that there was an agreement between two or more persons, and concerted action taken pursuant to the agreement. See: *Baring v. Grewal*, 2022 BCCA 42 at para. 52. His pleadings do not satisfy that element of the claim.

[70] However, although it is well-established that a claimant will not receive damages for conspiracy in a case where the claimant is entitled to recover compensation for the same loss as damages for another tort committed by the defendant, it is preferable not to determine issues of merger at the pleadings stage. See: *Jevco Insurance Company v. Pacific Assessment Centre Inc.*, 2015 ONSC 7751 (Div. Ct.) at para 53.

[71] It would be premature at the pleadings stage to apply the doctrine of merger, but the claim of civil conspiracy is struck as Mr. Fraser has failed to plead the requisite elements of the claim.

Does the Diocese of Kamloops have the capacity to be sued?

[72] Mr. Fraser has brought his claim against several defendants. One is the Roman Catholic Diocese of Kamloops (the "Diocese"). Counsel takes the position that the Diocese is an unincorporated association or a geographic area. They say it is not a natural person, a corporation or a body which has been given that capacity by legislation, and that therefore it is not a legal entity with capacity to be a party to litigation. They ask that the claim be struck as against the Diocese.

[73] Mr. Fraser's submissions on this point were brief. He was generally opposed.

[74] In his proposed Second ANOCC, in naming the parties, Mr. Fraser identified "the Bishop of Kamloops, the Roman Catholic (Incorporation) Act, S.B.C. 1947, c. 102" as the statute by which the corporation sole was created. That statute does not exist.

[75] The Roman Catholic Bishop of the Diocese of Kamloops and his successors in office are a corporation sole with perpetual succession, under the name and style of "The Roman Catholic Bishop of Kamloops", pursuant to s. 1 of the Roman Catholic Bishop of Kamloops Incorporation Act, S.B.C. 1947, c. 102.

- [76] It is a long-standing principle that an unincorporated association does not have the capacity to sue or be sued absent legislation providing otherwise, either expressly or by implication. See: *Kwicksutaineuk/Ah-Kwa-Mish First Nation v. British Columbia (Attorney General)*, 2012 BCCA 193 at para. 65. In the absence of a reference to a statute conferring legal capacity on "The Roman Catholic Diocese of Kamloops", I conclude that the Diocese lacks such capacity. The claims against it are struck.

Conditions of Amendment

- [77] Upon the following conditions, Mr. Fraser has leave to amend those parts of his ANOCC that raise claims of defamation including libel and slander, and those parts of his ANOCC that raise claims that Bishop Nguyen is vicariously liable for the actions of Pastor Weisbruck.
- [78] The amended pleading must be prepared as a "Fresh Amended Notice of Civil Claim". It must not include words struck out or words underlined.
- [79] It must set out a concise statement of the material facts giving rise to Mr. Fraser's claims. It must not include background facts or evidence. It must not be accompanied by schedules, without further leave of the court.
- [80] The legal basis of the claim must be amended to accord with changes in the Statement of Facts.
- [81] The Fresh ANOCC must be no more than thirty pages and must be filed and delivered to counsel for the defendants within ninety days of the release of this ruling.
- [82] The defendants will be at liberty to apply under Rule 9-5 of the Rules for an order striking out or dismissing all or parts of the Fresh ANOCC.

Costs

- [83] Mr. Fraser chose to draft his pleadings in a form that he subsequently decided required amendment. Although some amendments have been permitted, on a limited basis and on conditions, the application required the defendants to review the proposed changes, assess their impact, and prepare responding materials. A party who chooses to initiate a procedural step that imposes additional work on other parties should normally bear responsibility for the resulting costs.
- [84] An application to amend is ordinarily a routine interlocutory matter of ordinary difficulty. Scale B is the appropriate measure, despite the amount of work that was required of the defendants to produce materials in response. The applicant must pay the defendants' costs of this application at Scale B.

[85] The timing of a costs award can depend on several factors. In this case, Mr. Fraser drafted his original notice of civil claim and his first amended notice of civil claim when he had the assistance of counsel. The fact that he chose to draft them in the form that he did put him in the position where he decided to apply to amend. Costs will be payable by Mr. Fraser forthwith, to promote future litigation efficiency and to compensate the defendants promptly for the work they were forced to do in response.

"Hewson J."

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Prepared on 26 October 2026 · Esheria