

CANADA / JUDGMENT

Lee v. British Columbia (Attorney General)

2024 BCSC 865

COURT

Supreme Court of British Columbia

DECIDED

23 April 2024

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2024 BCSC 865 Lee v. British Columbia (Attorney General)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lee v. British Columbia (Attorney General),

2024 BCSC 865

Date: 20240423

Docket: S237026

Registry: Vancouver

Between:

Eduardo Lee

Plaintiff

And

Attorney General of British Columbia

Defendant

Before: The Honourable Mr. Justice Gomery

Oral Reasons for Judgment

In Chambers

The Plaintiff, appearing in person:

E. Lee

Counsel for the Defendant:

L.F. de Lima

K. Dele-Adedeji, Articled Student

Place and Date of Hearing:

Vancouver, B.C.

April 23, 2024

Place and Date of Judgment:

Vancouver, B.C.

April 23, 2024

- [1] THE COURT: The defendant, Attorney General for British Columbia, applies to strike the notice of civil claim on the ground that it fails to state a reasonable cause of action. The application is brought pursuant to Rule 9-5(1)(a) of the Supreme Court Civil Rules.
- [2] A pleading should be struck under Rule 9-5(1) only where, assuming the facts pleaded to be true, it is plain and obvious that the attack on it is well founded: *R. v. Imperial Tobacco Ltd.*, 2011 SCC 42 at para. 17.
- [3] In considering an application to strike, the pleading in question should be read generously and as a whole: *Lee v. G.Y. Lee & Associates Ltd.*, 2014 BCCA 400 at para. 14.
- [4] Where a pleading is functionally adequate--in that it provides an outline of material allegations and the relief sought--minor defects may be overlooked if the defendants are not prejudiced by them: *William v. British Columbia*, 2012 BCCA 285 at para. 106.
- [5] The action is one brought by the plaintiff, Eduardo Lee. He pleads that on October 15, 2021, he was struck by a car while legally walking in the pedestrian lane at the intersection of Railway Avenue and Francis Street in Richmond, British Columbia. He suffered a broken bone in his left knee. He pleads that his left knee's meniscus is broken and is no longer functional; that he cannot walk easily because of the pain in his knee; and that he has difficulty climbing and descending stairs and is experiencing depression. He pleads that this is a lifelong injury that cannot be cured.
- [6] Mr. Lee's complaint is that he does not have a right to sue the person who struck him for damages to compensate him for the injuries he has suffered. He says that in the accident, the driver was negligent. He says that he would have a claim if the driving was criminal, but not if it was merely negligent.
- [7] Mr. Lee refers to provisions of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231 [IVA] and, in particular, to recent amendments to the Act. He pleads:

2. The amended [IVA] is unconstitutional because it takes away the [victim's] ability to go to court of law to claim their entitlement to compensation with respect to their injuries. According to the new [IVA] the only victim allowed to sue are those who can prove criminality of the accident. This creates two types of Canadian victims. One type of Canadian are those who are injured by stolen speeding cars and they can easily go to court and sue. Another type is those injured in a car accident that cannot prove criminality. The Plaintiff belongs to this type. []
- [8] Mr. Lee pleads that the distinction drawn in the IVA between conduct caused by defendants who acted criminally and injuries caused by defendants who acted merely negligently is unconstitutional, because it is contrary to s. 15 of the Canadian Charter of Rights and Freedoms [Charter]. He pleads:
3. The amended [IVA] created two types of Canadians that are not equal and therefore unconstitutional. []
- [9] The amendments to the IVA that Mr. Lee complains of are found in ss. 115 and 116(2) of the Act.
- [10] Mr. Lee is essentially correct that the IVA draws a distinction in terms of the right to sue between ordinary victims of a motor vehicle accident and those who have been injured as a result of the conduct of a driver who engaged in or is guilty of conduct proscribed by certain provisions of the Criminal Code, R.S.C. 1985, c. C-46.
- [11] The issue is whether the distinction drawn in the IVA among accident victims, depending on whether the person at fault was engaged in proscribed criminal conduct, is a distinction prohibited or proscribed by s. 15 of the Charter. The Attorney General says that it is plain and obvious that it is not.
- [12] Mr. Lee submits that the distinction is unjust and the categories of discrimination set out in s. 15 of the Charter are not important. Unfortunately, for Mr. Lee's argument, the law is that the categories are important.
- [13] It is established law that a claimant asserting that legislation violates s. 15(1) must show that: (1) on its face or in its impact, the legislation creates a distinction based on enumerated or analogous grounds; and (2) the distinction burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage: *Fraser v. Canada (Attorney General)*, 2020 SCC 28 at para. 27.
- [14] The enumerated grounds are those set out in s. 15 of the Charter. It states:
- 15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

- [15] The analytical importance of the enumerated and analogous grounds is that they serve as "constant markers of suspect decision making or potential discrimination": *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203, 1999 CanLII 687. They define categories of potentially discriminatory conduct. A s. 15(1) claim must fit into such a category or it cannot succeed.
- [16] The ground of distinction identified by Mr. Lee in his notice of civil claim is not one of the grounds enumerated in s. 15 of the Charter. Is it analogous to the enumerated grounds? I addressed an equivalent question in *Bakhtiari v. British Columbia (Minister of Finance)*, 2023 BCSC 1260 at paras. 37 to 44. Based on an analysis of decisions of the Supreme Court of Canada and other courts, I stated:
- [44] I conclude that determining whether a proposed ground of distinction is analogous to the grounds enumerated in s. 15(1) of the Charter requires a focus on whether the distinction in question is based on an actually or constructively immutable quality of the group defined by the distinction as described in *Corbière*. Consideration of whether the group is a discrete and insular minority or a group that has been historically discriminated against may sometimes assist the analysis. Citizenship, marital status, sexual orientation, Aboriginal residence (on or off a reserve) are analogous grounds. Immigration status is not an analogous ground.
- [17] Applying the legal analysis required by the authorities, I conclude that it is plain and obvious that the distinction that is the foundation of Mr. Lee's complaint is not analogous to the grounds of discrimination enumerated in s. 15.
- [18] The quality of being the victim of a motor vehicle accident caused by a driver who was engaged in criminal conduct, as opposed to non-criminal conduct, is not immutable. The group of people who are not entitled to sue is not a discrete and insular minority, nor is it a group that has been historically discriminated against.
- [19] Mr. Lee's challenge to the IVA is bound to fail and it follows that the notice of civil claim must be struck. The legal flaw in Mr. Lee's claim is fundamental and cannot be corrected by amendment. The notice of civil claim will be struck without leave to amend. The action is dismissed.

"Gomery J."

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