

CANADA / JUDGMENT

Quigley v. Canada Revenue Agency

2025 BCSC 2677

COURT

Supreme Court of British Columbia

DECIDED

28 October 2025

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2025 BCSC 2677 Quigley v. Canada Revenue Agency

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Quigley v. Canada Revenue Agency,

2025 BCSC 2677

Date: 20251028

Docket: S257256

Registry: New Westminster

Between:

Richard Quigley

Plaintiff

And

Canada Revenue Agency

Defendant

Before: The Honourable Justice Crerar

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

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S. Singh

N. Sigouin

Place and Date of Trial/Hearing:

Abbotsford, B.C.

October 28, 2025

Place and Date of Judgment:

Abbotsford, B.C.

October 28, 2025

- [1] THE COURT: Before me is an application by the defendant, Canada Revenue Agency (the "CRA"), to have its application to strike the claim of the plaintiff in this proposed class proceeding heard in advance of the certification hearing. I will issue these oral reasons in the interests of moving this matter forward. I make my usual reservations to edit or expand these reasons if a transcript is ordered or for any other reason. The substance and the result, however, will remain the same.
- [2] The present proceeding is filed by the Merchant Law Firm. It concerns a charitable donation tax shelter scheme that has been referred to as the Global Learning Gift Initiative (the "GLGI"). This tax shelter scheme has been the subject of considerable past litigation. In 2015, the Tax Court in *Mariano v. Canada*, 2015 TCC 244, declared it to be a sham.
- [3] That decision in turn launched not one, not two, but several proceedings, at least three of which the Merchant Law Firm has been involved in. In *Canada v. Scheuer*, while not being technically a class proceeding, over 120 plaintiffs sued the CRA, alleging that the CRA was negligent in not informing those plaintiffs in a timely fashion of the consequences that would flow from their participation in the GLGI program. *Piett v. Canada Revenue Agency*, based in negligence, similarly alleges that the CRA failed to issue timely bulletins that it considered the shelter scheme to be a scam.
- [4] The *Scheuer* claim was dismissed for failing to assert a cognizable cause of action: *Canada v. Scheuer*, 2016 FCA 7 at para 45. The potential claim in misfeasance in public office, which had not been pleaded, was hypothetically allowed to survive: para 46. The plaintiff, however, did not pursue that opportunity to amend, and the claim was ultimately struck for want of prosecution.

- [5] Piett similarly pleaded negligence claims, and allegations that appeared to support a claim in misfeasance. For example, there were express claims of bad faith. The Saskatchewan Court of Queen's Bench noted the similarity of the claim to Scheuer, and noted that Mr Piett had in fact been a plaintiff in that claim: *Piett v Global Learning Group Inc.*, 2021 SKQB 232 at para 112 at paras 27-29; lv to appeal denied 2022 SKCA 141. The Saskatchewan Court of Queen's Bench struck the Piett claim for abuse of process in part because of a highly unusual funding mechanism initiated by the Merchant Law Firm: paras 15-17, 30-43; 49-66. Specifically, the litigation steering committee, consisting of Mr. Piett (who had been a GLGI sales agent), Ryan Mitchell (a former executive of GLGI), and Mr. Merchant himself, solicited \$500 non-refundable contributions from prospective class members, raising approximately \$1.7 million for the Merchant Law Group.
- [6] The judicial finding that this unorthodox and not fully disclosed funding mechanism was an abuse of process in turn spawned *Mayer v. Merchant Law Group LLP*. The Mayer action, which began in 2022, is a class proceeding that was certified by Justice Branch earlier this year: 2025 BCSC 1106. The proposed class in the Mayer action consists of those same class members in the Piett action now turning their sights against their former counsel -- the Merchant Law Group -- alleging negligence, unjust enrichment, breach of trust, and misrepresentation regarding the law firm's conduct and fee arrangement in the Piett action: paras 47-70.
- [7] The CRA, in the present application and in their proposed application to strike, notes a further form of abuse of process: the conflict of interest posed by the Merchant Law Firm prosecuting this claim while at the same time defending themselves in the Mayer claim spawned from its own actions in Piett.
- [8] I say this all by way of background. I do not propose to say much more in these reasons.
- [9] Counsel for the plaintiff correctly submits that it is not unusual in a sequencing application such as the present for the defendant or defendants in a class proceeding to seek to have an application to strike or some similar preliminary hearing heard in advance of the certification hearing. Of course, a successful strike application will avoid the considerable costs to both sides and indeed the cost of valuable judicial time, in preparing and arguing and determining the larger issues at play in the certification hearing.
- [10] At the same time, counsel for the plaintiff hypothesises, and it certainly matches this judge's assessment, that the general tendency in the jurisprudence is to not have a strike or similar application heard in advance of a certification hearing. Rather, the general tendency is to have the certification hearing and the strike or similar application heard at the same time. This avoids a multiplicity of hearings; it avoids the prospect of multiple interlocutory appeals; and it recognises the overlap of the consideration on the merits that is engaged in a strike application, and the consideration on the merits undertaken in s. 4(1) of the Class Proceedings Act, RSBC 1996, c 50 (the "Act") and analogous statutes.

- [11] Another reason that sequencing decisions generally order strike and certification application to be heard at the same time is the fact that there is usually little or no history with respect to the immediate or parallel proceedings. This is not such a case here. Here, we have the remarkable situation where not one but two courts in Canada have specifically dismissed claims brought by this specific law firm with respect to this specific tax deferral scheme.
- [12] We also have here the extraordinary facts of having one Canadian Court find the Merchant Law Group's manner of prosecution of those claims to be in itself an abuse of process. We have the further extraordinary circumstance of having one of my colleagues certify the Mayer class proceeding against the Merchant Law Group: thus having a second Canadian court confirm that there is at least some substance to a very real prospect of inappropriate action by the Merchant Law Group and the very real spectre of a conflict of interest for the Merchant Law Group. In short, should one of my colleagues hear the CRA's application to strike this present claim, it will not be a consideration of first instance.
- [13] There are thus multiple grounds put forward by the CRA for striking this immediate Quigley claim as an abuse of process. This distinguishes the present case from other cases that have ordered that the certification application be heard with the proposed preliminary strike or similar application.
- [14] The plaintiff, in his application response, largely focusses on fine brushstroke distinctions of the CRA's application and argument. For example, the respondent notes that the Scheuer action was not technically commenced by the Merchant Law Group. Rather, the Merchant Law Group came on for the appeal. Similarly, Richard Quigley, the plaintiff in the present action, was not a representative plaintiff or otherwise involved in the direction of the Scheuer or Piett actions. On that point, while Mr Quigley was not one of the 121 or so listed plaintiffs in Scheuer, he would have been a member in the Piett class, as someone who participated in this sham tax deferral scheme, had the Piett action, in fact, been certified rather than struck.
- [15] The plaintiff urges the court to follow the tendency of courts in general and specifically the Piett Court, to defer the strike application and instead have it heard at the time as the certification application: *Piett v. Global Learning Group Inc.*, 2018 SKQB 144. I have already indicated multiple preliminary distinctions from the typical order that is made.
- [16] I would also note another distinction, by reference to the Saskatchewan Court of Queen's Bench sequencing decision. The Court placed considerable weight on the fact that the Merchant Law Group had already filed its certification application materials by the time of the sequencing application. In short, there was less of a concern about delay:

[18] The general rule that the application for certification should be the first to be heard is, in part, justified by the fact that the Act imposes an ambitious deadline for filing that application. How can a plaintiff complain that an interlocutory application will result in inordinate delay if very substantial delays have already occurred, and would likely continue to occur in any event?

[19] That said, I am not satisfied that is the situation here. An application for certification has been filed. The plaintiff has asked that a schedule leading to the certification hearing be set. I am prepared to give the benefit of the doubt to the plaintiff, and assume he will now proceed expeditiously. If the plaintiff had not filed the application, and was unable to provide a reasonable explanation for the delay, his failure to proceed would have weighed far more heavily against him.

[emphasis added]

[17] In the present case, the plaintiff has not yet filed its certification materials. This stands in stark contrast to the CRA which, in fact, has already filed its application to strike, attached as an appendix to this sequencing application. In short, we can simply push the button to start the strike hearing: the CRA is ready, willing, and able to proceed with all due speed with its application to strike.

[18] This speaks to the *Shaver v. Mallinckrodt Canada ULC*, 2021 BCSC 455 sequencing consideration (a): delay by the plaintiff in proceeding to certification.

[19] The plaintiff, when confronted with the absence of its certification materials, states that those materials could be provided swiftly. Indeed, he points to the pre-existence of materials in *Scheuer* and *Piett* to indicate that the likely similar certification materials for this case could be readily generated and delivered.

[20] Of course, this argument makes the absence of certification materials before the Court even more conspicuous. It also further highlights the similarity between the prior two proceedings, which have since been struck, and the present proceedings. Thus, the absence of the certification materials, and the plaintiff's response to that noted absence of certification materials, in fact, fortifies the strength of the CRA's present application based on abuse of process.

[21] In primary response to the *Shaver* delay argument, the plaintiff blames external delays after the filing of its claim. This largely misses the primary point advanced by the CRA which notes the nearly one-year delay between the plaintiff's filing of the claim and its attempt to serve the claim on the CRA. No explanation is provided for that delay in getting the claim off the ground. Rather, the plaintiff addresses two potential arguments concerning post-filing delay which I do not, in fact, believe were raised by the CRA. First, the transfer from the initial filing Registry to, first, an attempt to transfer the proceeding to Vancouver, and then, an ultimate transfer to New Westminster. Second, there was an attempt to obtain a case management judge. Neither of these professed delays in themselves would justify a delay in

filing the certification motion. Those materials, again, would largely be based on those in the other actions already mentioned. An excuse for delay is further undermined by counsel's present statement that those certification materials would be "ready to go".

- [22] With respect to Shaver considerations (b) (the extent to which a preliminary application may dispose of the whole proceeding or narrow the issues to be determined, taking into account the strength of the applicant's arguments on the proposed applications and the breadth of the applications); (c) (the cost to the parties of participating in pre-certification procedures and the potential to avoid exposing the defendants to costs of a full certification hearing if the matter will be resolved on the basis of the s. 4(1)(a) requirement alone); (e) (the complexity and interplay of the issues that may arise in and between the pre-certification and certification applications); and (g) (the interests of economy and judicial efficiency), there is an overwhelming indication that it would be appropriate, promote judicial economy, and indeed be a mercy to the parties, to have this strike application heard in advance of the certification hearing.
- [23] Without prejudging the likely success of that application, which will be considered in greater depth by one of my colleagues, it would appear that a similarly successful strike application could be brought here, whether the claim is categorised as a negligence case or as a hypothetical misfeasance case. Given the three previous cases that I have mentioned, including affirmative judicial pronouncements about the strength of the case, there is a solid basis for making such a finding in this British Columbia proceeding, with largely analogous facts and considerable overlap in the plaintiff class. It certainly tips the balance in favour of having that application heard in advance of the considerable work required on both sides to prepare the certification material.
- [24] It would also greatly promote judicial economy to consider the strike application in advance. If this court determines the matter in the same way that past courts have heard, with respect to the strength of the underlying application based on negligence or misfeasance or however it is categorized, or with respect to the alleged conflict of interest, it will save tens, if not hundreds, of hours of counsel time and court time in adjudicating the much larger issue of certification. These remarkable circumstances scream out for a sequencing order in the manner sought by the CRA.
- [25] In response, the present plaintiff argues that the Quigley pleadings differ considerably from the two earlier proceedings in Scheuer and Piett. The plaintiff specifically notes that misfeasance is expressly pleaded in the present British Columbia pleading while it was not expressly pleaded in the earlier proceedings. As set out in my preliminary comments, as well as the CRA arguments that I have adopted in my reasons, while misfeasance was not set out as a specific cause of action in those cases, the ingredients of that claim and the thrust of the claim as it was put forward in pleadings and in argument in those proceedings was very much engaged before those other courts. Further, those claims based in misfeasance could have been expressly pleaded in the earlier proceedings, insofar as they are allegations of wrongdoing against the CRA. Finally, even if only the negligence claims that were expressly

pleaded in the earlier proceedings and are pleaded in the present proceedings are struck, it would still generate considerable judicial economy in narrowing the focus of the class proceeding to a two-year window of potential misfeasance and narrowing the number of potential class members.

- [26] Again, it makes sense to have this matter heard in advance rather than kicking the can down the line and committing both sides, as well as the court, to the considerably greater exercise of preparing and considering full certification materials. The past judicial determinations have a significant potential to be significantly persuasive, if not determinative, to this court in determining whether to strike this present Quigley action as an abuse of process.
- [27] With respect to Shaver factor (d), the plaintiff raises the spectre of interlocutory appeals from the decision in the CRA's preliminary strike application. Again, I will not pronounce on the likelihood of success of that application. But we have extraordinary facts, with the other judicial determinations of largely overlapping and similar issues before other courts.
- [28] Given this extraordinary judicial history of the Merchant Law Group's claims arising from this tax avoidance scheme, the spectre of interlocutory appeals or the prospect of receiving leave to bring those appeals or succeeding in these appeals would strike this court, on this very preliminary basis, as a less acute concern that would typically arise in this sort of sequencing application. I would also note that an application to strike decision based on abuse of process is a discretionary decision that is entitled to considerable curial deference, making it difficult to succeed on appeal.
- [29] For the rest of my reasons, I am simply going to adopt the written submissions of the CRA in their entirety. I would ask Ms. Facchin for the CRA to file a copy of her submissions in the Court Registry so that there is a clear point of reference as to the document that I am referring to.
- [30] There is no order sought with respect to costs and I certainly would not want to tie the hands or step on the toes of my colleague who hears the advance strike application with respect to that issue. All I would say, as a preliminary rumination, which well may be surpassed by Mr. Quigley's arguments at the strike application, is that while s. 37 of the Act generally insulates a plaintiff from a costs award in class proceedings, this may well be one of those extraordinary circumstances that would merit an award of costs for an application in a proposed class proceeding. I will leave it to the judge who determines the strike application as to whether costs be awarded with respect to this particular day of application.
- [31] Anything arising from that, counsel?
- [32] CNSL J. FACCHIN: Nothing from me.
- [33] CNSL S. ROXBOROUGH: No.
- [34] THE COURT: All right, thank you all. That concludes today's proceedings.

"Crerar J."

Appendix A: Canada Revenue Agency submissions: adopted

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