
CANADA / JUDGMENT

R.J.R. v. P.M.R.

2019 BCSC 31

COURT

Supreme Court of British Columbia

DECIDED

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2019 BCSC 31 R.J.R. v. P.M.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R.J.R. v. P.M.R.,

2019 BCSC 31

Date: 20190111

Docket: S181730

Registry: Victoria

Between:

R.J.R.

Plaintiff

And

P.M.R.

Her Majesty the Queen in right of the Province of BC

Minister of Public Safety and Solicitor General

Her Majesty the Queen in right of the Province of British Columbia

- Ministry of Children and Family Development

Defendants

Before: The Honourable Madam Justice Duncan

Reasons for Judgment

The Plaintiff appearing in person on his own behalf:

R.J.R.

Counsel for the Defendant, RCMP:

B. Ward

Counsel for the Defendant, MCFD:

D. Suntjens

Place and Date of Hearing:

Victoria, B.C.

November 6, 2018

Place and Date of Judgment:

Victoria, B.C.

January 11, 2019

Introduction

- [1] On June 6, 2018, the plaintiff filed a Notice of Civil Claim ("NOCC") against his former wife, the Province of British Columbia Minister of Public Safety and Solicitor General (the "RCMP") and the Ministry of Children and Family Development ("MCFD"). I will refer to the plaintiff as R.J.R. and his former wife as P.M.R. to protect the identity of their minor children.
- [2] In his NOCC, R.J.R. makes a variety of allegations against social workers, police officers, legal counsel and his former wife. The allegations against MCFD primarily involve the negligent investigation of child protection concerns regarding R.J.R., a lack of "due process", and misconduct in the court process. The allegations against the RCMP relate to police failure to investigate R.J.R.'s claims that his former wife had kidnapped his children, amongst other things. The allegations against both MCFD and the RCMP are that their actions caused R.J.R. to be alienated from his children.
- [3] MCFD and the RCMP both apply for an order under Rule 9-5(1) of the Supreme Court Civil Rules that the NOCC be struck without leave to amend and that the proceedings be dismissed. The application by MCFD is based on the contention that the action discloses no reasonable cause of action, is vexatious and is otherwise an abuse of process of the court. The application of the RCMP is brought on similar grounds.
- [4] R.J.R. did not file a response to the application to strike but appeared and made oral submissions. The defendant P.M.R. did not appear. She has not filed a response to the litigation and it appears from the materials filed by R.J.R. that she was not served with the NOCC in accordance with the Rules. R.J.R. filed an affidavit stating that he left the NOCC at

P.M.R.'s last known address but was advised by the current resident she does not live there any more. He also emailed the NOCC to her, although he had not obtained an order for alternative service.

Background

- [5] R.J.R. and P.M.R. have two children. Social workers first became involved with the family in 2009. Child protection proceedings took place between 2012 and 2016 in Provincial Court. There was also litigation in this Court, including applications by R.J.R. for contempt findings against the Province and individual social workers.
- [6] Orders and reasons for judgment in relation to most of these proceedings were filed in support of the application to dismiss R.J.R.'s NOCC. The reasons for judgment of Pearlman J. in *R.J.R. v. British Columbia (Children and Family Development)*, 2014 BCSC 860 provide particularly detailed background information about proceedings and orders relating to the children.
- [7] R.J.R. alleges in his NOCC that in September 2011 P.M.R. kidnapped their two children from shared custody in Squamish and took them to Port Renfrew. R.J.R. says that she made false allegations of domestic abuse to the RCMP and MCFD and that the RCMP warned him against going to Port Renfrew or even leaving Squamish to look for the children.
- [8] In January 2012, the Director received information concerning inappropriate sexual conduct by R.J.R. towards the children and commenced an investigation.
- [9] On May 2, 2012, Master Tokarek ordered that R.J.R. have supervised access to the children. The Director was not a party to the application underlying this order.
- [10] On May 10, 2012, Paul Brockhurst, who conducted the investigation on behalf of MCFD, interviewed the two children separately concerning allegations of inappropriate sexual conduct by R.J.R. MCFD learned that Master Tokarek had granted supervised access to the children. Mr. Brockhurst developed a safety plan with R.J.R. and his counsel at the time, which essentially required the approval of the Director for R.J.R. to have access to the children while the investigation was ongoing.
- [11] On June 1, 2012, P.M.R. advised MCFD that the children were anxious about access to their father. MCFD proposed that access should be suspended until the children settled. R.J.R. disagreed and asserted he should continue to have access as outlined in Master Tokarek's order. Mr. Brockhurst consulted with his manager, Denise Connell, and removed the children from the care of their parents on June 22, 2012 under the authority of s. 30(1) of the Child, Family and Community Service Act, R.S.B.C. 1996, c. 46 [CFCSA].
- [12] A presentation hearing was set for June 27, 2012 in Provincial Court at Duncan, but it was adjourned to August 22, 2012 to accommodate changes in counsel by both parents. On August 22, the Director applied for an order for interim custody of the children under s. 35(2) (9a) of the CFCSA before the Honourable Judge Harvey. R.J.R. did not contest the Director's

determination that the children were in need of protection. The result of the August 22 hearing were consent orders providing for the Director to have interim custody of the children and for the parents to have reasonable access to them, supervised at the discretion of the Director.

- [13] In August 2013, R.J.R. applied for a finding of contempt against social workers and counsel for P.M.R. The application was heard in March 2014 and dismissed by Pearlman J. on May 14, 2014. The citation for his reasons is set out at para. 6 of these reasons.
- [14] Social workers made arrangements for R.J.R. to have telephone access to the children in September 2013. Access was discontinued in October after the children refused to participate and after social workers received recommendations from the Vancouver Island Health Authority's Suspected Child Abuse and Neglect Team that access should be limited or halted to allow the children to deal with their emotions. Following this development, R.J.R. made numerous complaints to MCFD.
- [15] On October 10, 2013, the Director applied to vary Judge Harvey's August 22, 2012 order to permit R.J.R. and P.M.R. reasonable access to the children at the discretion of the Director. A two-day hearing for the Director's application for temporary custody was set for November 2013, but was adjourned at R.J.R.'s request to January 8, 2014. R.J.R. applied to adjourn the application again, but his application was refused. R.J.R. then consented to the Director's application for a six-month temporary custody order.
- [16] In April 2014, the Honourable Judge Wood made an interim order prohibiting R.J.R. from contacting or trying to contact the children, except as necessary to facilitate supervised access authorized by the Director. The order also prevented R.J.R. from attending at the children's school or molesting, harassing or annoying the children's caregivers. The order was renewed or extended on several occasions.
- [17] In March 2016, there was a four-day hearing in Provincial Court before the Honourable Judge Wishart which resulted in an order, dated March 8, 2016, returning the children to the custody of their mother, under the Director's supervision for a period of six months, and that R.J.R. have supervised access arranged and approved by the Director in accordance with the wishes of the children. A restraining order was also made against R.J.R.
- [18] On March 17, 2016, R.J.R.'s application for a finding of contempt against MCFD was heard by Madam Justice Dorgan. The application was focussed on an allegation that MCFD did not follow the August 6, 2015 order of Judge Brooks concerning the need for R.J.R. and P.M.R. to undergo a child-parent assessment. Dorgan J. reviewed the order of Judge Brooks and concluded that it made no provision for such an assessment and dismissed the contempt application.
- [19] On September 22, 2016, R.J.R. and P.M.R. appeared before Mr. Justice Josephson. R.J.R. applied to adjourn the trial, set for September 26, but his application was refused. The parties then entered into a comprehensive consent order under the Family Law Act

concerning guardianship, parenting time and parental responsibilities. R.J.R.'s parenting time was at the discretion of P.M.R. and as approved by the Director in accordance with the children's wishes. Issues of child support and spousal support were adjourned generally and R.J.R. consented to providing a filed F8 financial statement within 30 days.

The Current Litigation

[20] In his NOCC, R.J.R. alleges the following against MCFD:

- that P.M.R. had her boyfriend file a false accusation at the Lake Cowichan RCMP detachment that R.J.R. had sexually assaulted the children, which triggered an investigation by MCFD;
- that MCFD ignored the retraction of the accusation;
- that MCFD internally overruled a court order for visitation and access;
- that MCFD cited the police investigation for months yet no "due process investigation" on the details and accusations made by the defendant were completed;
- that a case worker for MCFD told him in November 2014 that despite the fact that he had passed a polygraph test, he would have to acknowledge that he was a child molester and go through a program to cure him;
- that P.M.R. expanded on the abuse details originally made in 2012 but he was not given the documents until late 2014 and that there was no due process on investigating the case by any caseworker or director;
- that MCFD had taken a firm stand that he was guilty without due process;
- that the RCMP, MCFD and P.M.R. have caused the complete forced alienation between him and his children.

[21] As against the RCMP, R.J.R. pleads the following:

- P.M.R. kidnapped their children and removed them to Port Renfrew after making false allegations of domestic abuse to the RCMP and MCFD in 2011;
- the RCMP failed to interview him following the alleged kidnapping, despite his requests that they do so;
- the RCMP subjected him to "emotional detention" by refusing to tell him where his children were following the alleged kidnapping and warned him against coming to Port Renfrew;
- the RCMP investigated and cleared him of allegations that he had sexually abused his children in 2012;
- the RCMP "interfered with the files and details" concerning a lack of "due process" relating to an unspecified complaint;

- the actions of the RCMP and the other defendants caused his forced alienation from his children;
- RCMP officers made threats to him that denied him his Charter rights.

[22] R.J.R. seeks a declaration in a newspaper of the full list of unlawful conditions and actions of the defendants. He also seeks compensatory damages, pecuniary damages, consequential damages, nominal damages, general damages, special damages, aggravated damages, punitive and exemplary damages, interest, special costs and a financial settlement of \$4,500,000.

[23] The legal basis for the claim is said to be perjury, offences under the Crown Liability and Proceedings Act, fruit of the poisonous tree, the Ministry of Children and Family Development Act, the Family Law Act, the Divorce Act, the CFCSA, the criminal law of kidnapping and parental child abduction, the right not to be arbitrarily detained and parental alienation.

The Law

[24] Rule 9-5(1) of the Supreme Court Rules provides:

- (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
 - (a) it discloses no reasonable claim or defence, as the case may be,
 - (b) it is unnecessary, scandalous, frivolous or vexatious,
 - (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
 - (d) it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

Rule 9-5(1)(a)

[25] Evidence is not admissible on a Rule 9-5(1)(a) application: see Rule 9-5(2).

[26] It must be "plain and obvious" that the pleading discloses no reasonable cause of action for a successful application to strike out a NOCC under Rule 9-5(1)(a): *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [Imperial Tobacco], which stated the test as follows:

[17] The parties agree on the test applicable on a motion to strike for not disclosing a reasonable cause of action under r. 19(24)(a) of the B.C. Supreme Court Rules [now R. 9-5(1)(a)]. This Court has reiterated the test on many occasions. A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action: *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 S.C.R. 263, at para. 15; *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, at p. 980. Another way of putting the test is

that the claim has no reasonable prospect of success. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial: see, generally, *Syl Apps Secure Treatment Centre v. B.D.*, 2007 SCC 38, [2007] 3 S.C.R. 83; *Odhavji Estate; Hunt; Attorney General of Canada v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735.

...

- [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) ...). 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.

[Emphasis added.]

- [27] In *Sahyoun v. Ho*, 2015 BCSC 392, Voith J. summarized the test for striking pleadings under Rule 9-5(1). After stating the test concerning Rule 9-5(1)(a), Voith J. observed:
- [58] The test for striking a pleading under R. 9-5(1)(b), on the basis that it is unnecessary, scandalous, frivolous or vexatious, was recently summarized in *Willow v. Chong*, 2013 BCSC 1083, where Fisher J. said:
- [20] Under Rule 9-5(1)(b), a pleading is unnecessary or vexatious if it does not go to establishing the plaintiff's cause of action, if it does not advance any claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the court's time and public resources: *Citizens for Foreign Aid Reform Inc. v Canadian Jewish Congress*, [1999] BCJ No. 2160 (SC); *Skender v. Farley*, 2007 BCCA 629. If a pleading is so confusing that it is difficult to understand what is pleaded, it may also be unnecessary, frivolous or vexatious.
- [59] An "embarrassing" pleading, as contemplated by R. 9-5(1)(c), is one that is so irrelevant that to allow it to stand would involve useless expense and would also prejudice the trial of the action by involving the parties in a dispute apart from the issues; *Keddie v. Dumas Hotels Ltd.* (1985), 62 B.C.L.R. 145 at 147 (C.A.).
- [60] The abuse of process standard under R. 9-5(1)(d) derives from a flexible doctrine. It allows the court to prevent a claim from proceeding where to do so would violate principles of judicial economy, consistency, finality and the integrity of the administration of justice; *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at paras. 35-37.

- [61] Though subsections (a)-(d) of R. 9-5(1) address different concerns and different wrongs, there is also some overlap between these subsections. Thus, for example, a pleading that discloses no cause of action, contrary to R. 9-5(1)(a), can also be unnecessary, frivolous or vexatious within the meaning of R. 9-5(1)(b); see e.g. *Virk v. Brar*, 2012 BCSC 1004 at paras. 69-70.
- [62] A pleading can be embarrassing if it does not state the real issue in an intelligible form. It can also be embarrassing if it is prolix, includes irrelevant facts, argument or evidence. It can be prejudicial if it is designed to or has the effect of confusing the defendant, making it difficult, if not impossible, to answer; *Virk* at para. 75.

The Position of MCFD

- [28] Ms. Suntjens, counsel for MCFD, says R.J.R.'s claim is based on allegations that social workers and their legal counsel falsified internal documents, lied in court and failed to follow due process. R.J.R.'s allegations are levelled against unspecified individuals and are based on assumptions and speculation, rather than material facts, and thus should be analyzed skeptically. In support of this proposition, Ms. Suntjens relied on *Young v. Borzoni*, 2007 BCCA 16, where Thackray J.A. said:
- [30] It is clear that great caution must be taken in relying on Operation Dismantle as a "general authority" that allegations in pleadings should be weighed as to their truth in proceedings of this kind. However, my consideration of the above authorities leads me to the conclusion that it is not fundamentally wrong to look behind the allegations in some cases. This can be taken from the statement of Estey J. in Operation Dismantle that the "rule does not require that allegations based on assumptions and speculation be taken as true. No violence is done to the rule where allegations, incapable of proof, are not taken as proven." This is also supported by the comment of Esson J. A. in *Rogers* that, "the process of subjecting the allegations in the pleadings to sceptical analysis in order to determine their true character, I consider that to have been an entirely appropriate procedure."
- [31] Therefore, in my opinion, considering the circumstances, litigation history and allegations in the case at bar it is appropriate to subject them to a sceptical analysis. Paragraphs 40, 41, 45, 46 and 47 of the statement of claim allege, against all of the defendants, intolerance, deceit, harassment, intimidation, writing malicious letters, falsifying documents and, in general, in disrupting the appellants' lives. They include an allegation that all of the defendants allowed, encouraged and influenced some of the Youngs' neighbours in "attempts to collide with the Plaintiffs' moving car, vandalism to the Plaintiff's property, uttering threats, trespassing, and watching of the Plaintiffs and their home." Paragraph 63 alleges that the "corporate" defendants, "under advice of Defendant Mr. Borzoni, fabricated and falsified documents destined" for the Tribunal and the Supreme Court.

[32] Most of these wide and sweeping allegations would not, even if true, ground an action for intentional infliction of nervous shock or for negligence by way of a breach of duty. However, particularly in that they are directed at all defendants, which includes a police department, a Regional District, corporations and individuals, the allegations can only be viewed as wild speculation. As said by Mr. Justice McKenzie, they are "only language, not reality." More substantively it can be said, paraphrasing from Operation Dismantle, that they are but speculation and it is not required that they be taken as true.

[Emphasis in original.]

[29] Counsel for MCFD also notes that R.J.R.'s claims relate in part to witness testimony or preparation for court and as a result would be barred by the doctrine of witness immunity. In *McDaniel v. McDaniel*, 2009 BCCA 53, the Court reviewed the jurisprudence concerning the scope of immunity for communications between a lawyer and a witness in preparation for giving evidence in judicial proceedings and cited *Elliott v. Insurance Crime Prevention Bureau*, 2005 NSCA 115 for its comprehensive review of the law of witness immunity. Cromwell J.A., as he then was, said:

[102] Witnesses are immune from civil liability for what they say and do in a judicial or quasi-judicial proceeding. This is the core of witness immunity. Outside that core, the immunity may also extend to things witnesses (and even potential witnesses) say and do out-of-court, provided that the extension is necessary in order to make the protection of testimony effective. But how far the immunity extends to things said and done out-of-court is a grey area. This case falls within that grey area. It is concerned with whether witness immunity protects the respondents' statements made out-of-court to the insurer while they were investigating the cause of the fire.

[115] The core of witness immunity is well established by authority. A witness has immunity in respect of what he or she says and does in court or in testimony before a quasi-judicial proceeding: *Darker v. Chief Constable of West Midlands Police*, [2001] 1 A.C. 435 (H.L.) at 463. The immunity also extends to a statement made by a witness if the statement is as to the nature of the evidence the witness can give and it is made to a professional person preparing the evidence to be presented in court: *Watson v. M'Ewan*, [[1905] A.C. 480 (H.L.)]; *Halls v. Mitchell*, [[1928] S.C.R. 125].

[117] The immunity, of course, does not exist to protect wrongdoers, but it will sometimes do so. For the immunity to be effective, witnesses must be protected from all law suits, not only unmeritorious ones. This protection of witnesses from the risk of suit is seen as more important than righting a wrong in a particular case. Moreover, to achieve its objective, the immunity must be clear: People must know in advance whether they are protected or not: *Darker v. Chief Constable of West Midlands Police* and *Brown*, ¶ 12.4(4)(e). The immunity, therefore, is a blunt instrument, barring all claims in the interests of the broader administration of justice.

- [155] . . . The application of the immunity, however, does not depend entirely on whether the person actually testifies. The immunity also extends to statements made by a potential witness to persons engaged professionally in assembling the evidence for pending or contemplated proceedings.
- [30] Finally, Ms. Suntutjens notes that social workers do not owe a duty of care to parents in child protection matters. Their duties are owed to the children. To the extent that the plaintiff's claim rests on an allegation that social workers owed him a duty of care, it has no reasonable prospect of success.
- [31] The Court of Appeal considered this issue in *Quinn v. British Columbia*, 2018 BCCA 320. The Province appealed the refusal to strike a claim under Rule 9-5(1)(a) as disclosing no reasonable cause of action in circumstances where children were removed from their parents by the Director. The parents claimed damages for, inter alia, the actions of the Director in substantiating a decision to remove children from their care. D. Smith J.A. for the Court said:
- [64] I agree with the Province that these types of allegations have no reasonable prospect of success in light of the reasoning in *Syl Apps Secure Treatment Centre v. B.D.*, 2007 SCC 38. In that decision, Abella J., writing for the Court, rejected the imposition of a private law duty of care on the Centre (operated by the Ontario Ministry of Community and Social Services) and one of its social workers in light of an allegation by the parents that the Centre and the social worker had been negligent in treating the child, which caused the child not to be returned to them. Justice Abella reasoned that a "compelling policy reason for refusing to find proximity" between the parents and the Centre was the overriding statutory focus on the best interests of the child:
- [41] The deciding factor for me, as in *Cooper and Edwards*, is the potential for conflicting duties: imposing a duty of care on the relationship between the family of a child in care and that child's court-ordered service providers creates a genuine potential for "serious and significant" conflict with the service providers' transcendent statutory duty to promote the best interests, protection and well-being of the children in their care.
- [65] This reasoning, in my view, is equally compelling in the case at bar. The Respondents' allegations, which in substance amount to the tort claim of negligent investigation, have no reasonable prospect of success. There is insufficient proximity between the Respondent parents and the Director to ground a duty of care for that tort in light of the Director's "transcendent statutory duty" to promote the best interests of children under the CFCSA.

The Position of the RCMP

- [32] Mr. Ward, counsel for the RCMP, maintains that, read most generously, the NOCC may engage the torts of negligent investigation, wrongful detention and possibly misfeasance in public office. He submits that R.J.R. is not within the class of persons to whom the police owe a duty of care that could give to a relationship of proximity necessary to base a

negligence suit. R.J.R.'s NOCC does not advance a claim in law, would serve no useful purpose and the pleadings are so confusing that it is difficult to understand what R.J.R. seeks. Compendiously, Mr. Ward submits that the NOCC runs afoul of all aspects of Rule 9-5(1), as discussed by Voith J. in *Sahyoun*.

- [33] Mr. Ward relies on *Callan v. Cooke*, 2012 BCSC 1589, where Arnold-Bailey J. carefully analyzed the limited circumstances in which police owe a private law duty to individuals (at paras. 44-68). She reviewed the decisions in *Hill v. Hamilton-Wentworth Regional Police*, 2007 SCC 41, wherein McLachlin CJC, for the majority, recognized the tort of negligent investigation exists in Canada for suspects being investigated, and *Doe v. Metropolitan Toronto (Municipality) Commissioners of Police* (1990), 72 D.L.R. (4th) 580 [Jane Doe], where the Ontario Court of Appeal found that the police owed a private law duty to warn victims about a serial rapist. Arnold-Bailey J. concluded that police do not generally owe a private duty of care to victims or potential victims with regard to their investigations.
- [34] Mr. Ward points out that in this case R.J.R. was not himself a victim of crime as it was his children who were allegedly kidnapped by their mother. R.J.R. does not plead a duty of care, nor can one arise in law where the plaintiff is neither a suspect nor a member of a very specific group as in *Jane Doe*. R.J.R.'s claims against the police for their alleged failures to investigate the removal of his children from his care are therefore bound to fail.
- [35] R.J.R. also alleges the RCMP fell short in its investigations of the sexual abuse allegations made against him between January and April 2012. Mr. Ward maintains there are no facts pleaded from which a breach of the standard of care arguably owed to a suspect might arise and in any event, R.J.R. was never charged criminally and in his pleadings he says he was "cleared" by police in April 2012.
- [36] R.J.R. does not state in his NOCC who conducted the investigation or why it was negligent. There is a vague allegation of interference by the Squamish RCMP with files and a complaint about lack of due process, but no connection between that and the sexual abuse investigation.
- [37] Mr. Ward maintains that any connection between the alleged legal failings of the RCMP and injury or other compensable harm to R.J.R. is unclear. R.J.R. pleads parental alienation, emotional distress and PTSD but does not clearly attribute those injuries to particular allegations.
- [38] As for R.J.R.'s claim for wrongful detention by the RCMP, Mr. Ward notes that R.J.R. alleges he was emotionally detained by the RCMP because they told him he could not leave Squamish to go to the Island to look for his children. R.J.R.'s claims lacks an allegation of a total deprivation of liberty which, according to A.M. Linden, *Canadian Tort Law*, 5th ed. (Toronto:Butterworths, 1993), is required to make out the tort of false imprisonment. At its highest, R.J.R.'s claim relates to a conditional detention: he felt wrongfully detained because he could not leave Squamish to look for his children, leaving it open to him to leave Squamish for other purposes.

- [39] Finally, while R.J.R. has not explicitly pleaded misfeasance in public office, Mr. Ward notes that some of the language he uses in his pleadings is suggestive of this tort. R.J.R. alleges that unidentified members of the Squamish RCMP "interfered" with "files and details" regarding "complaints of lack of due process" and that some of the individuals did not intend to follow law and procedure or "act in any way as to what should have been filed by the RCMP". Mr. Ward maintains these are bald allegations of wrongdoing with no context or identifiable factors and as such disclose no cause of action and should be struck.

Analysis

- [40] R.J.R.'s NOCC is difficult to understand. It largely fails to match up material facts to the cause of action pleaded against the different entities, and is generally confusing. It fails to identify individuals by name, with the exception of one police officer and one social worker.
- [41] It is difficult to divine precisely what R.J.R. intended to plead, but I accept that read generously it may be described as an action in negligence against MCFD and the RCMP, with overtones of offences contrary to the Criminal Code and unspecified violations of the Charter.
- [42] In my view, it is plain and obvious that R.J.R.'s claims against the RCMP and MCFD are without merit and must be struck out as disclosing no reasonable claim. R.J.R. has no legal basis in negligence against MCFD, as he was not owed a duty of care by social workers on the basis of *Syl Apps Secure Treatment Centre v. B.D.*, 2007 SCC 38 and *Quinn v. British Columbia*, cited earlier in these reasons.
- [43] Nor was R.J.R. owed a duty of care by the RCMP in the particular circumstances of this case. He expresses dissatisfaction in his pleadings about the RCMP's lack of diligence in following up on his kidnapping complaint, but those facts do not create a duty of care. Similarly, the RCMP did not recommend charges against R.J.R. for sexual offences and effectively cleared him through the administration of a polygraph. While he might have been a suspect, he was never charged.
- [44] R.J.R. is not in a category of persons to whom the police owe (or may owe) a duty of care, nor is the claim he advances a novel one that should be permitted to proceed under the modern approach to such claims: *Mohl v. The University of British Columbia*, 2006 BCCA 70 at para. 40.
- [45] As to R.J.R.'s claims under the Charter, the pleadings are non-specific as to which Charter section he is relying on and what material facts he relies on and disclose no actual cause of action. The sections of the Criminal Code set out in the pleadings do not give rise to a civil cause of action.
- [46] In summary, R.J.R.'s claims against MCFD and the RCMP disclose no reasonable cause(s) of action and will be struck out in their entirety, primarily under Rule 9-5(1)(a) but also under (b) through (d). The facts pleaded cannot be amended to resuscitate a cause of action.

- [47] This leaves the NOCC as against R.J.R.'s former spouse.
- [48] While R.J.R.'s former spouse was not properly served with the NOCC and did not appear on this application, I am of the view that the claims against her should also be struck out under Rule 9-5(1)(a) and (d).
- [49] R.J.R. alleges that P.M.R. was motivated to kidnap the children to obtain full custody of them for immigration purposes. He alleges she had her boyfriend file a false accusation of sexual assault with the RCMP, but does not name that individual. He alleges that she continued to abuse the children and could not take proper care of them. R.J.R. seeks that her false accusations against him be withdrawn and his name cleared with an apology in court. He wants their original shared custody agreements to be reinstated. He does not seek financial redress against her as it would "harm the children". He alleges she broke several serious laws but leaves it in the hands of the presiding judge to administer "what is best at this time".
- [50] R.J.R.'s pleadings against his former spouse allege that she did certain things, but they are not related to civil causes of action. R.J.R. could attempt to obtain a remedy for some of what he seeks against his former spouse - such as shared custody - through an application to vary the consent order entered into before Josephson J. in 2016. His effort to do so under the rubric of his NOCC is an abuse of process, in that it is an indirect effort to attack an order of this Court.
- [51] The balance of R.J.R.'s pleadings relate to allegations of kidnapping and lying and seek vague remedies for the alleged wrongdoing. It is plain and obvious that the pleadings disclose no reasonable claim and the NOCC as against P.M.R. must also be struck out.
- [52] The NOCC is struck out in its entirety, without leave to amend. The RCMP and MCFD are entitled to their costs of this application.

"Duncan J."

The Honourable Madam Justice Duncan

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