IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bains v. O'Rourke,*
2025 BCSC 2534

Date: 20251110
Docket: S255447
Registry: Vancouver

Between:

Jessie Bains

Plaintiff

And

Jennifer O'Rourke

Defendant

Before: The Honourable L. Hamilton

Oral Reasons for Judgment

In Chambers

The Plaintiff, appearing on his own behalf:	J. Bains
Counsel for the Defendant:	M. Cooperwilliams
Place and Date of Trial/Hearing:	Vancouver, B.C. November 10, 2025
Place and Date of Judgment:	Vancouver, B.C. November 10, 2025

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[1] **THE COURT:** I am prepared to give you oral reasons. If a transcript is ordered, I reserve the right to make corrections for grammar, spelling, citations, et cetera, but the result will not change.

[2] The defendant seeks an order pursuant to Rule 9-5(1) of the *Supreme Court Civil Rules* and/or the court's inherent jurisdiction to strike the amended notice of civil claim and notice of civil claim and dismissing the Plaintiff's claims.

[3] The plaintiff, Mr. Bains, opposes the application. He says there is no prejudice to keeping this action alive, "on ice" so to speak.

[4] The factual background is set out succinctly at Part 2, paragraphs 1 through 17 of the defendant's notice of application as follows:

> 1. The Defendant O'Rourke is a lawyer employed by the British Columbia Labour Relations Board ("the Board").
>
> 2. The Defendant is counsel for the Board and Andres Barker, who is a Vice-Chair of the Board, in Action No. S-254074 in the Vancouver Registry of this Honourable Court ("The Barker Action").
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> 3. The Barker Action relates to a decision dated April 30, 2025 *(Jessie Bains*, 2025 BCLRB 96) which was rendered by Barker in his role as Vice-Chair of the Board ("the Decision").
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> 4. The Decision dealt with seven applications filed by the Plaintiff with the Board alleging breaches of the *Labour Relations Code* (R.S.B.C. 1996, c. 244). The applications were assigned by the Board to Vice-Chair Barker for adjudication.
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> 5. On several occasions in the course of those proceedings, the Plaintiff requested that Vice-Chair Barker recuse himself and that he provide to the Plaintiff a copy of his oath of office. Vice-Chair Barker denied those requests.
>
> 6. In the Decision, Vice-Chair Barker dismissed the Plaintiff's seven applications.
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> 7. On June 18, 2025, a reconsideration panel of the Board dismissed the Plaintiff's application for leave and reconsideration of the Decision (*Jessie Bains*, 2025 BCLRB 119 (Leave for Reconsideration of 2025 BCLRB 96)).
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> 8. On May 29, 2025 (amended on June 16, 2025), the Plaintiff filed a Notice of Civil Claim in the Barker Action alleging, among other things, that Vice-Chair Barker's refusal to recuse himself and his refusal to provide to the Plaintiff a copy of his oath of office constituted a breach of public duty.
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> 9. On June 13, 2025, the Defendant, as counsel for the Board and Vice-Chair Barker, filed an application to strike the Notice of Civil Claim in the Barker Action on the basis that the Board's decision-makers are protected from such

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claims by statutory immunity and the claim seeks relief which cannot be brought in an action.

10. On June 26, 2025, the Defendant, as counsel for the Board and Vice-Chair Barker, filed a response to the Notice of Civil Claim in the Barker Action.

11. On June 20, 2025, the Plaintiff filed a Notice of Application in the Barker Action seeking an order, among other things, that the Defendant lacked standing to represent Vice-Chair Barker in the Barker Action and that all filings by the Defendant in the Barker Action be struck from the record ("the First Application").

12. On June 30, 2025, Justice Morishita dismissed the First Application.

13. On July 3, 2025, the Plaintiff filed a Notice of Appeal of Justice Morishita's decision.

14. On July 29, 2025, the Plaintiff filed a Notice of Application in the Barker Action seeking, among other things, an order for default judgment against Barker for failing to file a response to the Notice of Civil Claim and an order that the Defendant lacked standing to represent Barker in the Barker Action (the "Second Application").

15. On August 13, 2025, Justice Tucker dismissed the Second Application.

16. On August 20, 2025 (amended September 4, 2025), the Plaintiff filed a Notice of Appeal of Justice Tucker's decision.

17. Despite the decisions of Justice Morishita and Justice Tucker, the Plaintiff has continued to object to the Defendant's participation in the Barker Action as counsel for Vice-Chair Barker. That objection is the basis for the claim in this proceeding.

[5] I accept the above as the background facts.

The Applicable Rules

[6] Rules 9-5(1) and (2) of the *Supreme Court Civil Rules* provide:

> (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
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> > (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,

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> 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.
>
> (2) No evidence is admissible on an application under subrule (1) (a).

Does the amended notice of civil claim disclose a reasonable claim?

[7] Rule 9-5(1)(a) provides that the court may strike the whole or part of a pleading on the ground that it discloses no reasonable claim. Under this subsection, the court must generally only consider the pleadings, not evidence. In other words, I am to assume that the facts stated in the amended notice of claim are true, unless it is obvious that they cannot obviously be true or it would be absurd to assume they were true.

[8] For a pleading to be struck under subsection (1)(a), it must be plain and obvious that the claim has no reasonable prospect of success: *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at para. 64.

[9] Pleadings will be struck where they do not establish a cause of action, do not advance a claim known to law, or are groundless and fanciful: *Stoneman v. Denman Island Local Trust Committee*, 2010 BCSC 636 at para. 27.

Discussion regarding Rule 9-5(1)(a)

[10] I find that it is plain and obvious that the plaintiff's amended notice of civil claim has no reasonable prospect of success. In his amended notice of claim, the plaintiff makes the following claims:

1) trespass on civil claim;

2) procedural trespass;

3) trespass to process; and

4) abuse of authority.

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[11] I understand from the plaintiff's pleadings and his submissions, that he has made claims in trespass and abuse of authority against the defendant because of Ms. O'Rourke's actions in Vancouver Supreme Court action S-254074 (the "Barker Action") as follows:

1) Ms. O'Rourke has not specifically confirmed whether she is acting as a lawyer for Mr. Barker *personally* in the Barker Action;

2) When Ms. O'Rourke has signed orders in the Barker Action, she inserted "counsel for the Labour Board"; and

3) Ms. O'Rourke has applied on behalf of the Labour Board for standing in the Barker Action.

[12] Mr. Bains explains that in the Barker Action, he sued Mr. Barker personally and not in his capacity as Vice Chair of the Labour Board. Mr. Bains claims that Ms. O'Rourke is counsel for the Labour Board, not Mr. Bains personally.

[13] Mr. Bains says that it is not possible for Ms. O'Rourke to be counsel for Mr. Barker in Mr. Barker's personal capacity because Mr. O'Rourke is counsel for the Labour Board. As I understand his submissions, Mr. Bains says that because he is suing Mr. Barker personally in the Barker Action, Ms. O'Rourke should not be involved in the Barker Action. Therefore, Mr. Bains claims that Ms. O'Rourke is interfering with, or "trespassing" on his claims in the Barker Action. Mr. Bains says that Ms. O'Rourke's inserting herself into the Barker Action gives rise to his claims against Ms. O'Rourke in this action for "trespassing" on his claims against Mr. Barker in the Barker Action.

[14] "Trespass on civil claim" (which Mr. Bains claims in Part 2 paragraph (a) of the amended notice of civil claim) is not a tort or other claim known to law. It is plain and obvious that the claim discloses no reasonable cause of action, has no reasonable prospect of success, and is certain to fail, and it does not advance any claim known to law, is obvious that it cannot succeed, and would serve no useful

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purpose and would be a waste of court's time and public resources under Rule 9-5(1)(a).

[15] Similarly, “procedural trespass” (Part 3, paragraph 1 of the amended notice of civil claim), is not a tort or other claim known to law. It is therefore plain and obvious that this claim discloses no reasonable cause of action, has no reasonable prospect of success, and is certain to fail.

[16] Likewise, “trespass to process” (amended notice of civil claim, Part 3, paragraph 5), is not a tort or other claim known to law. It is therefore plain and obvious that this claim discloses no reasonable cause of action, has no reasonable prospect of success, and is certain to fail.

[17] Finally, “abuse of authority” (claimed in the amended notice of civil claim, Part 3, paragraph 5), is not a tort or other claim to law. It is therefore plain and obvious that this claim discloses no reasonable cause of action and has no reasonable prospect of success and is certain to fail.

[18] For the above reasons, I find that under Rule 9-5(1)(a), it is plain and obvious that the amended notice of civil claim has no prospect of success. In the event I am wrong, I will turn to address the other bases on which the defendant applies to strike the pleadings, namely Rule 9-5(1)(b) and (d).

Rule 9-5(1)(b)

[19] Rule 9-5(1)(b) provides that the court may strike a pleading on the ground that it is unnecessary, scandalous, frivolous, or vexatious. Unlike the case under subrule (1)(a) of Rule 9-5, evidence can be considered in the analysis under (1)(b), as well as under subsection (d) of Rule 9-5.

[20] It is scandalous, frivolous, and vexatious to bring an action to blame counsel for adverse rulings made by a trier of fact: *Holland v. Douglas*, 2010 BCSC 96, paragraph 67, appeal dismissed 2010 BCCA 34.

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Discussion regarding Rule 9-5(1)(b)

[21] Ms. O'Rourke is a lawyer. It is her business whether she acts as counsel for the Labour Relations Board, and/or the vice chair of the Labour Relations Board, and/or Mr. Barker personally. Mr. Barker is entitled to choose which counsel he wishes to retain to defend him in the other action. If he wishes to retain Ms. O'Rourke to defend him personally in the other action, that is his choice not Mr. Bains' choice. It is not for Mr. Bains to decide whether Ms. O'Rourke is professionally able to act for multiple clients.

[22] It is also frivolous and scandalous to bring a separate action against Ms. O'Rourke because Ms. O'Rourke has made an application for the Labour Relations Board to have standing in the Barker Action. That application is for the court in the Barker Action to decide.

[23] For these reasons, I find that the amended notice of claim is frivolous or scandalous.

Rule 9-5(1)(d)

[24] In the event I am wrong, I will consider the defendant's application pursuant to Rule 9-5(1)(d). This subsection provides that the court may strike a pleading on the ground that it represents an abuse of process. The doctrine of abuse of process is broad and flexible and permits the court to prevent unfairness and oppressive treatment in the context of civil actions: *Rossner v. Nystrom*, 2019 BCSC 583 at para. 43.

[25] I find that the amended notice of civil claim represents an abuse of process in two ways: (1) I find it is a collateral attack on Justice Morishita's decision in the other action; and (2) it is an attack on another party's lawyer in the course of doing their job.

[26] As such, I find that the notice of civil claim is an abuse of process pursuant to s. 9-5(1)(b) for both reasons.

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Appropriate Remedy

[27] In terms of the appropriate remedy, Rules 9-5(1) and 9-6(5) are applicable. Where a claim is brought by a self-represented litigant, the court should consider whether a self-represented litigant's defective pleadings can be corrected by way of amendment. In my view, however, the pleadings are so overwhelmed with difficulty, it is not possible to amend and fix the problems that exist.

[28] In *Olumide v. British Columbia (Human Rights Tribunal)*, 2019 BCCA 386 at para. 10, the Court of Appeal upheld the decision of the court below to strike a self-represented party's claim where it was so defective as to be incapable of amendment.

[29] Here the civil claim has already been amended and it still does not set out any true basis in law for the claims. I am unable to see how any further amendments would remedy the situation. There is no legal basis for the claims made by Mr. Bains. Therefore, the remedy that does justice in the circumstances is to strike the notice of civil claim and amended notice of civil claim and to dismiss the action entirely.

Costs

[30] The defendant seeks costs and the plaintiff in his response opposes costs. I am awarding costs in a lump sum payment of $1,000 all in, payable forthwith. In my view, the defendant has been extremely reasonable by not seeking special costs in the circumstances.

[31] The defendant has also asked that I dispense with Mr. Bains' signature on the order and I am doing so.

[32] That concludes my ruling. Is there anything that needs clarification or did I neglect to address anything?

[33] CNSL M. COOPERWILLIAMS: There's nothing on my side.

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[34] THE COURT: All right. Mr. Bains?

[35] JESSIE BAINS: You've said it.

[36] THE COURT: Mr. Cooperwilliams will draft the order and I am directing that he send a copy of the entered order to you as soon as he gets it back.

[37] CNSL M. COOPERWILLIAMS: Yes.

[38] THE COURT: Thank you both.

“Hamilton J.”

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