



No. 2210080
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**NOAH ALTER, JARRYD JAEGER,
COOPER ASP and THE FREE SPEECH CLUB LTD.**

PLAINTIFFS

AND:

**THE UNIVERSITY OF BRITISH COLUMBIA and
HIS MAJESTY THE KING IN RIGHT OF BRITISH COLUMBIA**

DEFENDANTS

APPLICATION RESPONSE

APPLICATION RESPONSE OF: The defendant University of British Columbia ("UBC")

THIS IS A RESPONSE to the notice of application of the plaintiffs filed April 5, 2024.

The application respondent estimates that the application will take 20 minutes.

Part 1: ORDERS CONSENTED TO

The application respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application on the following terms: NONE

Part 2: ORDERS OPPOSED

The application respondent opposes the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: ALL

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: NONE

Part 4: FACTUAL BASIS

A. Overview

1. The plaintiffs bring this application under Rule 6-1 seeking a right to further amend their amended notice of civil claim based on an outcome that is speculative. Such an application is not permissible under the Supreme Court Civil Rules (the “Rules”).

B. Procedural History

Multiplicity of Proceedings

2. The plaintiffs commenced this action on December 19, 2022 after they had already commenced a petition proceeding against UBC on July 10, 2020 in respect of the same matter.
3. UBC intended to bring an application to strike the petition proceeding because it did not comply with the Rules and, if the petition proceeding was not struck, an application to strike this action because of the multiplicity of proceedings, which is an abuse of process.

Affidavit #1 of Robyn Press made April 16, 2024 (“**Press Affidavit**”) at
Exhibit A, p 1, para 2

4. The plaintiffs advised that it would proceed with this action and “abandon the claims for public law remedies under the [*Judicial Review Procedure Act*]” (that is, abandon the petition proceeding).

Press Affidavit at Exhibit B, p 3, para 2

5. The petition proceeding has not been discontinued by the plaintiffs.
6. UBC has advised the plaintiffs that it will not file a response to civil claim in this action until the plaintiffs discontinue the petition, as they said they would.

Press Affidavit at Exhibit C, p 6, para 3

The Province’s Application to Strike and Plaintiffs’ Amendment Application

7. The plaintiffs amended their notice of civil claim on March 13, 2024.

8. His Majesty the King in Right of British Columbia (the “Province”) brings an application under Rule 9-5(1)(a) to have this action struck, without leave to amend, and dismissed against the Province.
9. Despite the Province seeking to have the entire action struck for disclosing no reasonable claim, rather than certain parts of the amended notice of civil claim, the plaintiffs “Out of an abundance of caution...are applying for leave to amend the [amended notice of civil claim] in the event this Honourable Court finds the pleading contains impermissible conclusions of law and orders portions struck.”

Notice of application filed March 22, 2024 at Part 2, para 7

10. The plaintiffs have not provided a proposed further amended notice of civil claim.

Notice of application filed March 22, 2024 at Part 2, para 8

C. Funding of the Litigation

11. In the course of this litigation, the plaintiffs made a costs proposal to UBC in which plaintiffs’ counsel wrote that he would “be able to assure payment” should UBC need to apply for costs.

Press Affidavit at Exhibit B, p 4, para 1

12. UBC has asked the plaintiffs, on several occasions, whether the Justice Center for Constitutional Freedoms was funding and would be paying any costs in this litigation.

Press Affidavit at Exhibit A, p 1-2; Exhibit C, p 6, para 5

13. The plaintiffs have not responded to UBC’s question about the Justice Center for Constitutional Freedoms.

Press Affidavit at Exhibit A, p 1-2; Exhibit C, p 6, para 5

Part 5: LEGAL BASIS

A. Amending Pleadings

14. UBC relies on Rules 6-1, 8-1, and 14-1 of the Rules.
15. Rule 6-1 of the *Supreme Court Civil Rules* sets out:

(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,[...]

16. UBC cannot respond to, and this Court cannot assess, whether an amendment should be permitted without the plaintiffs having identified their proposed amendments.

17. This application is premature and a waste of the Court's time. The application must fail.

B. Costs

18. UBC seeks costs under Rule 14-1 of the Rules.

19. The plaintiffs should not be shielded from an adverse costs award. This matter is a dispute amongst private parties—not one of public interest.

Servatius v Alberni School District No 70, 2022 BCCA 421 ("**Servatius**") at para 259

20. Even if there is a public interest element, this Court should not depart from the usual costs order because plaintiffs' counsel has previously assured UBC and the Province that if costs were awarded against its clients, they would be paid.

Press Affidavit at Exhibit B, p 6, para 1
Victoria (City) v Adams, 2009 BCCA 56 at paras 185-186

21. Further, if a party seeks to avoid the ordinary costs rules on the basis that the litigation is public interest litigation and the named parties cannot afford costs, the court must know who is truly financing the litigation. Here, the plaintiffs have not responded to the question of whether the Justice Center for Constitutional Freedoms is funding this litigation and would be paying any costs award.

Servatius at paras 256-259, 274, 276

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Robyn Press made April 16, 2024.
2. Amended notice of civil claim filed March 13, 2024.
3. Such further and other materials as counsel may advise and this Court permits.

The application respondent has not filed in this proceeding a document that contains the application respondent's address for service. The application respondent's address for service is:

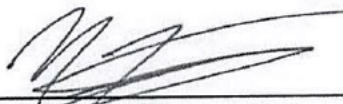
Harris & Company LLP
Barristers and Solicitors

[REDACTED]

Attention: Rodney W. Sieg

[REDACTED]

Dated: 16 April 2024


For: Signature of lawyer for
University of British Columbia,
Rodney W. Sieg and Hubert Lai, KC