



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

NOTICE OF APPLICATION

Names of applicants: Noah Alter, Jarryd Jaeger, Cooper Asp, and the Free Speech Club Ltd.

To: The University of British Columbia and His Majesty the King in Right of British Columbia

TAKE NOTICE that an application will be made by the applicants to the presiding judge or associate judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on 7/May/2024 at 10:00 am for the order set out in Part 1 below.

The applicants estimate that the application will take 30 minutes.

☐ This matter is within the jurisdiction of an associate judge.

☒ This matter is not within the jurisdiction of an associate judge.¹

¹ Rule 8-1(18)

PART 1: ORDER(S) SOUGHT

1. An Order pursuant to Rule 6-1(1) granting leave for the plaintiffs to amend the amended notice of civil claim, filed March 13, 2024 ("**NCC**") in the event this Honourable Court finds the pleading contains impermissible conclusions of law.
2. An order that no costs be awarded for or against the plaintiffs whatever the outcome of the application, given the public interest in the outcome of these proceedings.
3. Such further and other relief as counsel may advise and this Honourable Court may deem just.

PART 2: FACTUAL BASIS

4. The plaintiffs filed their notice of civil claim on December 19, 2022, and filed the NCC on March 13, 2024.
5. The defendants in this action are the University of British Columbia ("**UBC**") and His Majesty the King in Right of British Columbia (the "**Crown**")
6. The Crown filed its response to the NCC on March 22, 2024.
7. The Crown filed a notice of application (the "**NOA**") to strike the NCC as against the Crown, *in toto*, on March 22, 2024. The Crown has not applied to strike any discrete portion of the pleadings; it has only applied to strike the NCC as against the Crown, *in toto*. It provides no particulars of any discrete portions of the NCC which ought to be struck. On the basis of the NOA, the plaintiffs have submitted it would be improper to strike any discrete portions of the NCC. Out of an abundance of caution, the plaintiffs are applying for leave to amend the NCC in the event this Honourable Court finds the pleading contains impermissible conclusions of law and orders portions struck.
8. Given the uncertain nature of the Crown's NOA, the within application is broad and no draft amendment can be provided.

PART 3: LEGAL BASIS

9. The plaintiff seeks leave to amend the NCC pursuant to Rule 6-1(1).

Rule 6-1(1)
10. Pleadings may contain conclusions of law if they are supported by pleaded facts. The NCC is compliant with this rule.

Rule 3-7(9)

11. When considering R 6-1(1) applications, the court must first determine whether a new cause of action is raised. When amending an originating document, the “cause of action” means such facts to be proven to support the plaintiff’s right to the judgement of the court. A new cause of action does not arise merely because there is a new pleading or alternative remedy or a new characterization of a wrong from the same factual basis.

Swiss Reinsurance Company v. Camarin Limited, 2018 BCCA 122, para 31.

Taylor v. Blenz The Canadian Coffee Company Ltd., 2019 BCSC 906, para 36.

12. In the current application, the plaintiffs merely seek leave to amend their pleadings should this Honourable Court strike portions for containing impermissible conclusions of law. The purpose of the amendment is merely to correct technical deficiencies – not to raise new causes of action.

13. Where there is no new cause of action, the courts have adopted a generous approach to granting leave. Amendments should be granted liberally in order to enable the real issues to be determined and tried. The overriding consideration is the interests of justice generally and to direct what is just and convenient between the parties.

Langret Investments S.A. v McDonnell, 1996 CarswellBC 544 (BCCA), para 42-44.

Continental Steel Ltd. v. CTL Steel Ltd., 2014 BCSC 104, para 26

14. Amendment will not be allowed where it is “plain and obvious” or “absolutely beyond doubt” that it discloses no reasonable cause of action. However, all doubts on the facts or the law should be resolved in favour of allowing the amendment and proceeding to trial. Courts should only disallow an amendment as a last resort. For the reasons given in the plaintiffs’ application response, being filed herewith, the plaintiffs submit the amendments disclose a reasonable cause of action.

Plumrose Inc. v A & A Foods Ltd, 1996 CarswellBC 1916 (SC)

Forliti (Guardian ad litem of) v Wolley, 2003 BCSC 1082, para 13

Jones, McNaughton, Innoventure S & K Holdings Ltd et al v Innoventure (Tri-Cities) Holding Ltd et al, 2006 1567.

15. A court can refuse leave to amend if such an amendment will prejudice a party. A mere negative effect on a party is insufficient to demonstrate prejudice. A party must show that its ability to respond has been negatively affected before it can claim prejudice.

Bel Mar Developments Inc. v North Shore Credit Union, 2001 CarswellBC 780 (BCSC) at para 9

16. Some examples of prejudice that the courts have found include:
- a. destruction of documents that could have been important evidence in defence of a proposed claim;
 - b. faded memories and aging witnesses; and
 - c. death of a witness.

287993 B.C. Ltd. v. Nanaimo (Regional District), 2006 BCSC 786, para 25
Casa Roma Pizza, Spaghetti & Steak House Ltd. v. Gerling Global General Insurance Co.,
1994 CarswellBC 102 (BCCA), paras 54-58.

17. There is no prejudice to the defendants by these proposed amendments. The amendments are to address any parts of the NCC that this Court may strike for technical deficiency. They do not in any way affect the ability of the defendants to respond. The factual nexus is already known to the defendants through the NCC. Nothing wholly new is being added.

PART 4: MATERIAL TO BE RELIED ON

- 18. Amended notice of civil claim, filed March 13, 2024.
- 19. Notice of application of the Crown, filed March 22, 2024.
- 20. Application response of the plaintiffs, to be filed herewith.
- 21. Such further materials as counsel may advise and this Court may permit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application

- a. file an application response in Form 33,
- b. file the original of every affidavit, and of every other document that
 - i. you intend to refer to at the hearing of this application, and
 - ii. has not already been filed in the proceeding, and
- c. serve on the applicant 2 copies of the following and on every other party of record one copy of the following:
 - i. a copy of the filed application response;

- ii. a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- iii. if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

April 5, 2024

Date



Signature of Glenn Blackett, lawyer for applicants

To be completed by the court only:

Order made

[] in the terms requested in paragraphs of Part 1 of this notice of application

[] with the following variations and additional terms

.....

Date: [dd/mm/yyyy].....

.....
 Signature of [] Judge [] Associate Judge

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ [] discovery: comply with demand for documents
- ☐ [] discovery: production of additional documents
- ☐ [] other matters concerning document discovery
- ☐ [] extend oral discovery
- ☐ [] other matter concerning oral discovery
- ☒ [x] amend pleadings
- ☐ [] add/change parties
- ☐ [] summary judgment
- ☐ [] summary trial
- ☐ [] service
- ☐ [] mediation
- ☐ [] adjournments
- ☐ [] proceedings at trial
- ☐ [] case plan orders: amend
- ☐ [] case plan orders: other
- ☐ [] experts

This **NOTICE OF APPLICATION** is prepared by Glenn Blackett, Barrister, of Blackett Law, whole place of business and address for service is 600, 1285 West Broadway, Vancouver, BC V6H 3X8; Telephone: (587) 674-3445; Email Address: glennblackett@outlook.com.