



SUPREME COURT OF BRITISH COLUMBIA

Date: 20250130
Docket: S2210080
Registry: Vancouver

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

Before: The Honourable Justice Groves
in Chambers

Oral Reasons for Judgment

Counsel for the Plaintiffs:

G. Blackett

Counsel for the Defendant, His Majesty the
King in Right of British Columbia:

S. Ortega
K. Kotliarsky

Counsel for the Defendant, The University
of British Columbia:

N.V. Tzemis
M. Aspiazu

Place and Date of Hearing:

Vancouver, B.C.
January 30, 2025

Place and Date of Judgment:

Vancouver, B.C.
January 30, 2025

[1] **THE COURT:** The application before the court today is an application to amend an order of Registrar Gaily, an order which had the effect of settling the order of Justice Greenwood. Justice Greenwood heard an application on May 7 & 8, 2024, and delivered judgment on June 4, 2024 indexed at *Alter v. The University of British Columbia*, 2024 BCSC 961.

[2] Registrar Gaily's role was the role of a registrar, which I want to articulate here for just a brief moment. A registrar is a judicial officer, a presider in Supreme Court, but is not someone with any inherent jurisdiction. The registrar, in their function as the officer which settles the terms of orders when parties cannot agree to the terms of the order, does not interpret or read into, amend, or clarify the reasons for judgment of a judge. The registrar's role is to craft an order that in the registrar's view reflects the actual words of the judge who made the order, not necessarily what one party views is the intention of the judge, not necessarily a process of converting a detailed analysis of a judge's reasons into words in an order. The role of the registrar is to read the reasons, consider what is presented to them by the various parties, and sign an order which the registrar views as reflecting the words of the judge in their reasons, period.

[3] The application that was before Greenwood J. was an application brought on by the Province dated March 22, 2024, and it sought a number prayers of relief, notably:

1. An order pursuant to Rule 9-5(1)(a) striking the amended notice of civil claim against the defendant, His Majesty the King in Right of the Province, without leave to amend; and
2. An order pursuant to Rule 9-5(1)(a) dismissing the action against the defendant, His Majesty the King in Right of the Province, and removing the Province from the style of cause.

[4] During their course of the argument, defendant's counsel, the Province, provided written submissions in which they articulated for Greenwood J. the specific

paragraphs in the claim that they felt were inappropriate. They articulated the reasons why under Rule 9-5(1)(a) the amended notice of civil claim and those particular sections should be struck, and they articulated in their written submissions reasons why the various sections should be struck without leave to amend.

[5] In their written submissions, they also informed Greenwood J. why they felt the action should be dismissed under Rule 9-5(1) against the Province. Justice Greenwood heard, I am sure, everything that the parties said. He reserved judgment for close to a month. He articulated reasons which are 68 paragraphs in total. In those reasons, he did not specifically talk about striking certain sections of the claim, but took a more holistic approach to the litigation and the claim against the Province and determined that he agreed with the position advanced by the Province in paragraph 1 of their notice of application. He said at para. 67:

[67] The application to strike the pleadings against the Province under Rule 9-5(1)(a) is allowed and the claim against the Province is struck. As the defects in the pleadings go to substantive issues rather than formal defects or the manner in which the pleadings are drafted, I would grant the motion to strike without leave to amend the notice of civil claim.

[6] In his reasons and in his conclusions, Greenwood J. did not specifically deal with paragraph 2 of the notice of application, which was to dismiss the action against the defendant. Obviously, though, the effect of striking the entirety of a claim and prohibiting amendments to reactivate that claim clearly has the effect of ending the claim by the plaintiffs against the Province.

[7] As a result of the decision of Greenwood J., the plaintiffs have appealed. Registrar Gaily had a draft order before her. The draft order said in paragraph 1, before she amended it, the following:

The Province's application is allowed. The amended notice of civil claim filed May 13, 2024, is struck as against the Province without leave to amend.

[8] At that point, she put a period and struck out the words "and the action as against the Province is dismissed." I am advised that counsel for the plaintiffs here suggested that that last sentence be deleted from the draft order because, in fact,

Greenwood J. did not say, though he was invited to, that the action against the Province is dismissed.

[9] Registrar Gaily in that regard made the absolute right decision, in my view. She looked at the reasons of Greenwood J. She read what he concluded, and she created, with the assistance of counsel, an order that reflects accurately what Greenwood J. ordered. Justice Greenwood did not specifically say, as he was invited to and requested to specifically in paragraph 2 of the Province's notice of motion, that the claim against the Province is dismissed. Counsel for the plaintiffs argued, and Registrar Gaily agreed, that language which would reflect that should be struck from the draft order.

[10] In my view, before me today counsel for the plaintiffs is taking a completely different approach to the broader question of settling the terms of this order. He is asking the court to look at the submissions of the Province, to perhaps look at the pleadings, and then to insert into Greenwood J.'s order reference to specific paragraphs being struck, and these references dovetail with the submissions of counsel for the Province.

[11] He is essentially asking the court, for reasons which are uncertain to me, but he says relates to his ability to fully argue the matter on appeal, which I will get to in a moment, to insert into the order of Greenwood J., specific paragraphs which would provide a chapter-and-verse description of the sections in the amended notice of civil claim which need to be struck. He is saying it was a mistake of Registrar Gaily not to do this.

[12] Though that may make some logical sense in terms of absolute clarity, that is not what Greenwood J. ordered. Nowhere in his reasons, which I had the opportunity to read over the lunch hour, does Greenwood J. articulate his intention to specifically strike specific sections of an amended notice of civil claim by articulating what those sections are and by pronouncing that they individually need to be struck. He chose to craft his reasons in the manner in which he did, and he concluded his reasons in paragraph 67 in a manner, which is on the face of it, despite the capable

argument of counsel for the plaintiff, is abundantly clear. It is abundantly clear from what Justice Greenwood said that the claim against the Province is struck and that the liberty, if it be, to amend is not a liberty available to the plaintiffs. The claim is struck without leave to amend.

[13] I do not believe Registrar Gaily made a mistake in settling the order on the basis which she did. The application to settle the order in a different fashion must be dismissed.

[14] Let me say a few words in addition about the role of appellate courts and their approach, as I understand it, to appeals. While it is true that appeals are from an order, not from reasons, it is the role of appellate courts to consider whether or not a judge made an error in a decision that a judge made. It would be impossible for appellate courts to fully inform themselves of the reasons of a judge in making a decision a judge made by simply looking at the order which results from proceedings. In fact, courts of appeal across the country are often critical of trial judges, for not articulating in their reasons with any degree of detail or clarity why they made the decision they did.

[15] I do not think it really was the suggestion of counsel for the plaintiff, but one interpretation of what he might have said or suggested was that court of appeals simply look at the, in this case, one-page order and decide the correctness of a judge's decision. That is not how things work. Yes, you are appealing from the order itself, but the substance, the analysis, the legal thought process, the summary of facts, the summary of submissions, the conclusions to be drawn from the law, the law itself, are all found in the reasons, and that is what the court of appeal analyzes in its never-ending search for error in trial judges' decisions.

[16] There is, in my view, no real possibility that the plaintiffs here would be forestalled from arguing in the court of appeal in any manner in which they wish to or in which they are permitted, any of the issues or even more issues than they argued in front of Greenwood J. The form of the order does not matter one iota to how these plaintiffs are going to effect or prosecute their appeal.

[17] In conclusion, this is an appeal of the decision of Registrar Gaily. Registrar Gaily's role as a registrar was to create an order that was as reflective of the reasons of Greenwood J. granted on June 4, 2024, as she could. She did that. She followed his analysis and his conclusions, and his conclusions, as she has articulated them in paragraphs 1 and 2 of her order, are abundantly clear. For those reasons, the application brought on by the plaintiffs before me today is dismissed.

[18] On the issue of costs, the defendant province will have their costs in the cause. If they are successful in the ultimate determination of this matter, they will have their costs of today. If they are not ultimately successful, then each party will bear their own costs. Thank you.

“J.R. Groves J.”

GROVES J.