COURT OF APPEAL

ON APPEAL FROM the Order of The Honourable Justice Greenwood of the Supreme Court of British Columbia pronounced on June 4, 2024 and October 10, 2024.

BETWEEN:

Noah Alter, Jarryd Jaeger, Cooper Asp, and The Free Speech Club Ltd.

APPELLANTS
(Plaintiffs)

AND:

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

RESPONDENTS
(Defendants)

Publication Ban or Anonymity Order (if any) : NIL

Sealing Order (if any): NIL

APPELLANTS' REPLY FACTUM
To Factum of The University of British Columbia
Filed by the Appellants

Noah Alter, Jarryd Jaeger, Cooper Asp, and The Free Speech Club Ltd.

Glenn Blackett

Glenn Blackett Law

[redacted]

Counsel for the Appellants

His Majesty the King in Right of British Columbia

Emily Lapper, Sergio Ortega, and Karin Kotliarsky

Ministry of Attorney General

[redacted]

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

The University of British Columbia

Rodney W. Sieg, Hubert Lai, K.C. and Natalia V. Tzemis

Harris & Company LLP

[redacted]

Counsel for the Respondent, The University of British Columbia

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APPELLANTS' REPLY TO RESPONDENT'S FACTUM ON APPEAL

I. Procedural History

1. Both the BCF[1] and UBC's factum (filed January 19, 2026, the "**UBCF**"), incorrectly claim that analyzing the *Charter*'s application to UBC is now "unnecessary"[2]. The respondents, neither of whom has filed a cross appeal, also take the unusual position that the appeal could be dismissed[3] because, *inter alia*, Greenwood J. was in error. This confusion necessitates a review of the procedural history.

2. BC applied, with UBC's consent, to strike "the Claim against the Province"[4] meaning it applied to strike, *inter alia*, allegations that UBC was subject to the *Charter* (the "**S. 32 Claims**"[5]) and that BC was liable for *Charter* damages (the "**S. 24 Claims**"[6]).[7]

3. The purpose of the strike rule (*Rule* 9-5(1)(a)) is to weed out hopeless claims to ensure court and party time and resources are not wasted.[8] The purpose of the Application was, therefore, to weed out both the S. 32 Claims and the S. 24 Claims on the theory those claims are a hopeless waste of party and court resources.

4. Having brought that application to Greenwood J, it became "necessary" for the Honourable Justice to determine if those claims were a hopeless waste of time.

5. BC's attack on the S. 32 Claims was its first attack[9] and was Greenwood J.'s first finding and basis for his decision.[10] Having determined the S. 32 Claims were hopeless, it was arguably not strictly "necessary" for the Justice to then analyze the S. 24 Claims – BC

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[1] Definitions in plaintiffs' reply factum (to BC), filed January 28, 2026 (the "**ARF**") adopted herein.
[2] BCF para. 16, UBCF paras. 6 and 20.
[3] BCF p. 5 and para. 16; UBCF paras. 6, 7, 8, 19 and 20.
[4] UBCF para. 2; see also Amended Appeal Record, filed December 3, 2024 ["**AAR**"] p. 69
[5] NCC Part 1 paras. 7, 11-14,16-25, 28, 66, and Part 3 para. 1(f).
[6] NCC Style of cause, Part 1 para. 5, Part 2 paras. 4(b), 5(b), 6(b), 7(b), and Part 3 para. 1(i).
[7] *Alter v The University of British Columbia*, 2025 BCCA 453 ("***Alter***") paras. 6 to 10.
[8] *Knight v Imperial Tobacco Canada Ltd.*, 2011 SCC 42, para. 20.
[9] AAR pp. 72,73 paras. 14 to 18
[10] Reasons para. 5 and 12 to 35.

could not be liable for UBC's *Charter* breaches if the *Charter* did not apply to UBC.[11] However, the Justice took the next step and also analyzed the S. 24 Claims. This was entirely appropriate. His finding on the S. 32 Claims might have been overturned on appeal. Providing multiple grounds for a decision is neither inappropriate nor does it render anyone finding *obiter dicta*, as formerly claimed by UBC.[12]

6. BC could have structured its application differently. It could have asked what both defendants now ask this Court to do: strike the S. 24 Claims while leaving the S. 32 Claims intact. But that was not its application. To UBC's benefit, BC also applied to strike the S. 32 Claims - which request has now consumed significant court and party resources.

7. It now seems to be the respondents' argument that, contrary to its application and the expectations of all parties, Greenwood J. should have started with the S. 24 Claims and then refused all further relief. But, just as Greenwood J. should not have limited his analysis to the S. 32 Claims, he should not have limited his analysis to the S. 24 Claims. His finding on the S. 24 Claims could also have been overturned on appeal. Further, the respondents' now-preferred approach would have left the parties litigating the S. 32 Claims which are – according to the defendants and Greenwood J. – clearly hopeless. This would defeat the purpose of the rule.

8. The plaintiffs certainly did not object to the Court determining both issues – they would much prefer to see any hopeless claims struck at the beginning, not at the end, of litigation. Why does UBC not share this interest?

9. Wishing to take a Mulligan, the defendants now encourage this Court to reinsert the S. 32 Claims back into the NCC[13] so claims (which they say and Greenwood J. determined to be hopeless) can be litigated to the end of trial. This is not just bizarre, it is an abuse of process.[14] The defendants ask, effectively, for all previous litigation on the S. 32 Claims –

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[11] Parenthetically, UBC states incorrectly that "the application of the *Charter* to UBC is not dispositive of this appeal" (UBCF page 6) - the appeal can be dismissed solely on the grounds that the *Charter* does not apply to UBC.
[12] *The Catalyst Capital Group Inc v VimpelCom Ltd*., 2019 ONCA 354 paras. 32 and 33.
[13] BCF para. 16, UBCF 6, 7, 8, 19 and 20.
[14] See para. 11(b), below, and see *R. v Regan*, 2002 SCC 12, paras. 49 and 50.

which was initiated by BC, was consented to by UBC, and has consumed substantial court and party resources – be rendered a grand waste of everyone's time.[15]

10. Regardless, it is necessary to address the S. 32 Claims because they were struck from the NCC and may not be reinserted if they are indeed hopeless[16] – as both defendants still allege and as Greenwood J. has already determined.

11. In addition, the defendants' request is:

a. a new issue raised at appeal which should be disallowed:[17] the issue should have been put to Greenwood J. in the first instance; the parties all sought a finding on the issue; hopeless claims should be weeded out early; the *Court of Appeal Act*, SBC 2021, c 6 provides that, where a respondent wants a variation of an order, it must file a cross appeal (s. 14(1)), no such cross appeals have been filed; and neither defendant presents any law or argument in support of the claim there are any errors which might justify a variation (subject to paras. 14, 15, and 16 below);

b. something which should have been raised before Greenwood J., rendering the issue *res judicata* by issue estoppel[18] and a collateral attack on his order[19]; and

c. contrary to their prior conduct and representations on which many parties relied to their detriment, so they should be estopped.[20]

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[15] The Section 32 issue constituted half of the work on BC's Application (application, reply, briefs, oral argument, Reasons, costs submissions, Costs Reasons, costs order), the whole of the plaintiffs' application to properly settle the order (negotiation, oral argument before Registrar, appeal to Justice, replies, briefs, oral argument, reasons, order), the whole appeal of the settlement to this Court (appeal, factums, oral argument, reasons), the whole of UBC's application to quash that appeal (application, briefs, oral argument, reasons, order), and half of the work done on the present appeal including UBC's application to have itself added as a respondent because it had an interest only in the Section 32 Claims (*Alter v British Columbia*, 2024 BCCA 396, para. 14.) which application to settle delayed the hearing of this appeal by more than a year.
[16] *Henry v British Columbia (Attorney General)*, 2012 BCSC 1401 (CanLII), para. 38
[17] Donald J.M. Brown, K.C. and David Fairlie, *Civil Appeals,* (Toronto: Thompson Reuters, 2024) p. 6-6.
[18] *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 SCR 460, para. 24.
[19] *Canada (Attorney General) v TeleZone Inc.*, 2010 SCC 62 paras. 60 to 68.
[20] *Montreal Trust Co. v Williston Wildcatters Corp.*, 2002 SKCA 91, paras. 28-38.

12. However, should this Court grant the defendants' request to remit "hopeless" claims for trial, the plaintiffs request enhanced costs to compensate for all time wasted in this Court and below.

II. UBC's Disappearing "Interest"

13. UBC successfully applied to be added as a respondent on the basis it had an interest arguing the S. 32 Claims.[21] But its factum makes no such argument – only BC's does.[22] UBC's argument, now, is that the S. 32 Claims should be ignored – which argument BC also makes.[23] In fact, UBC's factum nearly disclaims any interest in the appeal[24] including taking no position on whether the appeal should be allowed.[25] UBC's factum almost entirely duplicates facts and arguments made in the AF and BCF. The only novel argument UBC makes is, respectfully, a poorly constructed throw-away (addressed at paras. 14, 15, and 16 below). Whatever the outcome of the appeal, UBC's appearance as a respondent contradicts its previously claimed interest and adds no value. The plaintiffs should be awarded costs of the appeal against UBC, costs of UBC's application to be added as a respondent, and costs of both respondents' applications for an extension on the filing of *facta*.

III. Bedford

14. Like BC, UBC relies on the strawman argument that the plaintiffs need this Court to "reconsider" or "overturn" prior caselaw.[26] This was addressed in the plaintiffs' factums and ignored by the respondents.[27]

15. UBC also argues (its only novel argument) that whether a court should "ignore binding precedent" can only be decided after a full trial. The argument is confused and wrong.

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[21] *Alter v British Columbia*, 2024 BCCA 396, para. 14 ("***Alter***").
[22] BCF paras. 21 to 51.
[23] BCF para. 16.
[24] UBCF p. 6: "Insofar as UBC has an interest in this appeal …"
[25] UBCF para. 21.
[26] BCF para. 23, UBCF paras. 16 – 18.
[27] AF para. 13 and ARF paras. 5 and 6.

16. The Application was only to determine whether the plaintiffs' claims were hopeless – not to determine if those claims succeeded. At this stage, to the very minor extent *Bedford v Canada (Attorney General)*, 2013 SCC 72 ("***Bedford***") may be relevant,[28] success on that argument would not overturn precedent – it would only leave the door open to the plaintiffs to seek to overturn precedent at trial. While a claim's novelty is not sufficient reason to strike it[29], novelty does not (as UBC now argues) immunize a claim from being struck.[30] If the NCC does not allege a fundamental change in circumstance, for example, it is hopeless to claim the *Bedford* test might be satisfied on that basis.

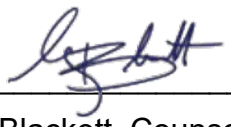
IV. Other

17. UBC misstates various caselaw throughout its factum[31], but those same errors were made by BC and have, therefore, been sufficiently addressed in the ARF.

18. Given the unusual remedial request of the respondents (that the S. 32 Claims be reinserted into the NCC) this Court should, respectfully, bear in mind the risk the plaintiffs successfully guarded against in *Alter* (see para. 17): that, based on the Reasons, if Greenwood J.'s order did not expressly strike the S. 32 Claims, then, whatever the outcome of this Appeal, his finding that such claims were hopeless might still bind the plaintiffs by the principles of *res judicata*,[32] horizontal *stare decisis*,[33] or abuse of process.[34] The plaintiffs request this Court, *inter alia*, reinsert the S. 32 Claims because they are not hopeless. Other bases for reinserting the S. 32 Claims may, again, raise this risk.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at the City of Calgary, in the Province of Alberta, this 28h day of January 2026.



Glenn Blackett, Counsel for the Appellants

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[28] AF para. 13.
[29] *R. v Imperial Tobacco Canada Ltd.*, 2011 SCC 42, para. 21.
[30] UBC certainly provides no authority.
[31] UBCF paras. 11, 12, 13, 14, 16, and 17.
[32] *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 SCR 460 paras. 24 and 25.
[33] *R. v Sullivan*, 2022 SCC 19 at paras. 61 to 65.
[34] *Toronto (City) v CUPE Local 79*, 2003 SCC 63, at paras. 42 and 51.

APPENDICES: LIST OF AUTHORITIES

Authorities	**Page # in factum**	**Para # in factum**
Alter v British Columbia, 2024 BCCA 396	6, 7	9, 13
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Bedford v Canada (Attorney General), 2013 SCC 72	8	16
Canada (Attorney General) v TeleZone Inc., 2010 SCC 62	6	11(b)
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SECONDARY SOURCES		
Donald J.M. Brown, K.C. and David Fairlie*, Civil Appeals,* (Toronto: Thompson Reuters, 2024)	6	11(a)

APPENDICES: ENACTMENTS

Court of Appeal Act, SBC 2021, c 6, s. 14(1)

Cross appeal

14 (1) A respondent may bring a cross appeal to request that the court vary any part of an order being appealed.