

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *599253 Alberta Ltd. v. British Columbia*,
2025 BCSC 1175

Date: 20250624
Docket: S62010
Registry: Kamloops

Between:

599253 Alberta Ltd. and Larry Penner

Plaintiffs

And

His Majesty the King in Right of the Province of British Columbia

Defendant

Before: The Honourable Madam Justice Sharma

Reasons for Judgment

Counsel for the Plaintiffs:

J. Frame

Counsel for the Defendant:

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Place and Date of Trial/Hearing:

Kamloops, B.C.
February 25, 2025

Place and Date of Judgment:

Kamloops, B.C.
June 24, 2025

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I. OVERVIEW

[1] This is an application brought by the defendant, his Majesty the King in right of the province of British Columbia (the “Province”), seeking an order striking out the notice of civil claim in this action, without leave to amend.

[2] In their pleadings and written submissions, the plaintiffs described their claim as concerning the following:

[T]he illegal construction of a defective dam (the “Dam”) by the then BC Minister of Highways, Phil Gaglardi; the Comptroller of Water Rights’ overruling of the efforts by local officials to have the Dam brought into compliance; the transfer of legal responsibility for the Dam to others (and now the plaintiffs); the efforts by the Province to avoid disclosing the history of the Dam to the plaintiffs and the efforts by the Province to have the plaintiffs pay to fix the problem created by the then BC Minister of Highways, Phil Gaglardi, and ignored by the Comptroller of Water Rights.

[3] The plaintiffs seek damages in negligence.

[4] The Province’s position is that the plaintiffs’ claim has no chance of success in the face of binding appellate authority. The Province brings the application pursuant to R. 9-5(1)(a) of the *Supreme Court Civil Rules* on the basis that it is plain and obvious that the claim does not disclose a reasonable claim. The Province also contends the action should be struck pursuant to R. 9-5(1)(d) as an abuse of process based, in part, on a guilty plea entered by the plaintiff Larry Penner to a regulatory offence related to the dam.

[5] The plaintiffs submit the pleadings reveal a triable issue, so the claim should not be struck under R. 9-5(1)(a). They also submit that the facts do not establish an abuse of process.

II. FACTS

[6] This action is about a dam located on land whose address is 480 Cherry Creek Station Rd. near Kamloops, BC (the “Property”). The Property is owned by the plaintiff 599253 Alberta Ltd. (“599”). Mr. Penner is the principal of 599. The plaintiffs

own the dam together with W800 Holdings Ltd. and Robert Simpson (the “Neighbours”). The Neighbours are not involved in this action.

[7] The dam is authorized under a water licence appurtenant to the Property. It was built in 1967 and ultimately approved by the Comptroller of Water Rights in June 1968 even though it was built without complying with the prescribed conditions.

[8] Ownership of the Property has changed several times since the dam was built, and the plaintiffs purchased it in 2002.

[9] Most of the material facts are not contested, but the parties disagree on the relevance and legal impact of many facts.

A. The Water Licenses

[10] A partial history of water licenses attached to the dam is set out in the affidavit of Colleen Dreger, senior water authorization specialist with the Ministry of Forests (the “MOF”). That history includes the following:

- a) MOF’s files, 0242577 and 0270602, contain the records of water licenses relevant to this action.
- b) In May 1996, conditional water license 110581 was issued under file 0242577. That license authorized a “dam, pump, pipe, sprinkler system and trough” whose location was indicated on a plan attached to the conditional water license.
- c) In August 2002, conditional water license 116105 was issued under file 0270602. That water license authorized “diversion structures, pumps, pipe, and sprinkler system”. Attached to that conditional water license was the plan showing the location of the dam as well as the permit issued under the *Water Act*, authorizing the occupation of Crown land.
- d) In February 2014, conditional water license 131119 (“CWL 131119”) was issued under file 0270602 in substitution of the existing license 116105.

CWL 131119 authorized “diversion structures, ditches, pumps, pipe and sprinkler system” whose location was shown on an attached plan.

- e) In July 2016, the Property received an updated parcel identifier (PID) and legal description. However, MOF’s file numbers associated with the water licenses remained the same.

[11] Ms. Dreger deposed that in May 2017, Cherry Creek experienced a freshet, which flooded many properties along the creek and caused sediment to float downstream towards the Property and Kamloops Lake. After that flood, Ms. Dreger noticed the dam located on the Property had filled up with debris and had not been properly maintained.

[12] In the fall of 2018, the plaintiffs received a letter dated September 24, 2018, from the Ministry of Forest, Lands, Natural Resources Operations and Rural Development (the “Ministry”). The letter stated that the dam required immediate maintenance, pointing to an owner's responsibility under the *Water Sustainability Act*, S.B.C. 2014, c. 15 [WSA], to maintain and repair works authorized by a license. The following excerpts from that letter are also relevant:

... As we are unaware of the structural history of your dam you will be required to hire a qualified dam safety professional to assess the stability of the dam, and to recommend maintenance requirements in order of priority. Based on this priority list an appropriate work plan will need to be submitted to and accepted by this office before the commencement of work. The dam safety professional also will be required to determine the appropriate consequence classification and associated regulatory requirement for the dam. ...

... you are required to hire an Engineer qualified in the assessment and maintenance of dams within 30 days of this letter and provide this information to the Dam Safety Officer (Darren Bennett). This Engineer will be required to assemble a deficiency/stability/safety report for your dam, with maintenance and remediation recommendations by 31 December 2018. A work plan is to be submitted by 01 February 2019, with the intent of completing some high priority tasks before May 2019.

[13] The letter ended by advising that since 599 was one of two water license holders that shared responsibility (together with the Neighbours), it was recommended the license holders work together to carry out the terms in the letter.

B. The Orders Issued in 2019 and 2020

[14] On August 23, 2019, Ms. Dreger sent a letter to the plaintiffs enclosing an engineer's order issued under s. 93 of the *WSA* (the "2019 Order"). The letter noted that a previous letter was sent on September 24, 2018, setting out required maintenance for the dam, which was followed by telephone calls indicating that the September 2018 letter "ha[d] not been actioned". She reminded the plaintiffs that as holders of a water license, they were responsible to maintain and repair works authorized under the license, and could be liable for damages if the dam failed.

[15] The letter also confirmed the plaintiffs' right to appeal the 2019 Order to the Environmental Appeal Board, specifying that an appeal does not automatically stay or suspend operation of an order.

[16] The 2019 Order stated that the plaintiffs (and the Neighbours) had failed to maintain or repair the dam. Other portions of the 2019 Order were:

- a. Clause 1: hire a professional engineer qualified in the assessment and maintenance of dams and forward that person's contact information to the Ministry by October 15, 2019.
- b. Clause 2: that engineer would be required by December 31, 2019, to:
 - i. assemble a deficiency/stability/safety report for the dam;
 - ii. provide maintenance and remediation recommendations; and,
 - iii. submit a work plan to the dam safety officer for acceptance.
- c. Clause 3: by March 31, 2020, have the engineer:
 - i. supervise the construction maintenance activities identified in the work plan;
 - ii. submit a final construction report; and

- iii. determine appropriate consequence classification and regulatory requirements for the dam.
- d. Clause 4: by October 15, 2019, hire a professional biologist to supervise activities associated with the maintenance of the work.
- e. Clause 5: by December 31, 2019, the biologist is required to develop an environmental management plan and submit it to the Ministry for acceptance.
- f. Clause 6: by March 31, 2020, have the biologist monitor the construction maintenance activities in the environmental management plan.
- g. Clause 7: engage a professional biologist to provide a rationale to the habitat officer, including site-specific mitigation measures if in-stream works must happen outside of the least risk fish timing window of July 22 to October 31, with the requirement that a variance must be issued before any work outside of the timing window.

[17] Ms. Dreger spoke with Mr. Simpson on January 2, 2020, and he advised her that the plaintiffs and the Neighbours were unable to comply with the timelines in the 2019 Order. Following that conversation, Ms. Dreger sent a letter dated January 30, 2020, to the plaintiffs amending the 2019 Order. That letter also noted that additional terms were now required since the work prescribed in the 2019 Order would not be completed before the freshet. Together, the amended and new terms constituted what I will call the 2020 Order.

[18] The 2020 Order amended the 2019 Order as follows:

- a) Clause 2 was amended to state that the engineer must provide the work plan to the dam safety officer by May 31, 2020.
- b) Clause 3 was amended to state that the engineer will be required to supervise construction/maintenance activities identified in the work plan by September 30, 2020;

- c) Clause 5 was amended to state that the professional biologist was required to develop an environmental management land and submit it to the habitat officer by May 31, 2020.
 - d) Clause 6 was amended to state that the professional biologist must monitor the construction/maintenance activities identified by the environmental management plan by September 30, 2020.
- [19] The 2020 Order also contained the following new clauses:
- a) Clause 7: by March 15, 2020, the engineer would be required to develop:
 - i. a surveillance and monitoring plan; and
 - ii. a modified dam emergency plan.
 - b) Clause 8: by November 30, 2020, the engineer would be required to:
 - i. assemble a deficiency/stability/safety report for the dam;
 - ii. provide maintenance and remediation recommendations;
 - iii. submit final construction report; and
 - iv. determine the appropriate consequence classification and associated regulatory requirement for the dam.

C. The Criminal Proceeding

[20] The plaintiffs did not comply with the 2019 Order or the 2020 Order, and were charged with what is classified under *WSA* as a “high penalty” offence. Section 107(1)(i) states that anyone who “wilfully contravenes an order of the comptroller, a water manager or an engineer” commits an offence and is liable to a fine up to \$1,000,000, imprisonment for up to a year, or both.

[21] Mr. Penner and Mr. Simpson pleaded guilty and were sentenced pursuant to a joint submission on January 3, 2023. Mr. Penner was fined \$2,000.

[22] In accepting the joint submission, the Provincial Court made a number of comments, including:

[2] ... it sounds like 50 years ago or so, there was a dam structure built by a private citizen who also happened to be the Minister of Highways. It was not built with authority. The initial analysis ended up bringing the senior civil servant in the area to examine it, and it was determined that there was a concern about its stability, but nothing was really done other than it was – the, I guess, mitigation of the risk was to be managed through keeping the gate open.

[3] Over the ensuing decades, keeping the gate open has not really sufficed because silt or what have you has built up, and so at this point, the water was observed flowing over the dam, and there is concern about environmental impacts, so water specialists became involved in May of 2017, and resulted in orders in August of 2019 that required a number of things to happen.

...

[7] I am told that the parties have a Gordian knot because the engineers could not get down to the business of assessing the dam without knowing what happened at the outset, what the plans and original building structures were, and that was thwarted by a lack of information available and disclosure. So initially, the disclosure was requested, an FOI request was made, and that was ultimately then determined not to be relevant to the prosecution. So ultimately, it took a long time for that information to flow to the parties, but it ultimately did.

...

[10] So I am prepared to accept the joint submission. I did express concerns and I think the parties addressed my concern, about the fact that the remediation has not yet happened, but the Crown assures me that my concern can be addressed through further actions, and in fact, defence counsel points out that the government can go ahead and do the work itself and simply bill the respondents if there is not a better solution to this. So it is not a situation where if I do not make an order -- a probation order or something like that compelling that the parties fix this dam, that there is no remedy for that.

[11] so I am satisfied then that the parties have turned their minds to that, and they have a plan for that, and ultimately, there are a lot of details here that are going to have to be worked out between Mr. Penner and Mr. Simpson and His Majesty, and there are at least, I suppose, three possible solutions. ...

[12] So all of these things are going to be potentially costly. Removal of the dam would run at about \$177,000, I am told. So this is not a situation where the parties are going to be walking away without consequences for this.

[Emphasis added.]

D. The Plaintiffs' Pleadings

[23] After Mr. Penner paid the fine, the plaintiffs filed their notice of civil claim on March 24, 2023, and amended it on August 16, 2023 (the “ANOCC”).

[24] In the ANOCC, the plaintiffs plead, among others, the following facts regarding the history of the dam:

- a) The Kamloops Water District office (the “District”) received plans on February 28, 1967, for the dam on behalf of Karobil Enterprises Ltd. (“Karobil”). The plans were submitted by William Gaglardi on behalf of the Honourable Phil Gaglardi (“Gaglardi”), who stated the plans were drawn up by a professional engineer with the Department of Highways (Phil Gaglardi was Minister of Highways at the time).
- b) Gaglardi called the District on March 1, 1967, requesting approval of the plans. The same day, a deputy minister (it is not specific as to which ministry) also called the District requesting its recommendation as soon as possible.
- c) An engineer with the District recommended the dam be authorized conditional upon “adequate supervision, preferably by a registered engineer ... to ensure the dam is built as planned”.
- d) An assistant engineer with the District noted that “overturning is almost critical, but with the addition of dowels into the bedrock safety should be assured” and that the dam is feasible “so long as it is founded on a rock base”.
- e) In March 1967, conditional water license 32042 was issued to Karobil, and it included clause K, which read, in part, “construction of the dam authorized under clause (h) hereof shall not be commenced until plans of same have been submitted to and approved by Comptroller of Water Rights”.

- f) Some time after March 1967, Karobil constructed the dam without first submitting plans to the Comptroller for approval as required by clause K of the water license.
- g) The District undertook a review of the structural stability of dam in March 1968, concluding that it was “outside acceptable limits but is believed [to have been] keyed and doweled into bedrock” but that “the steel struts, provided as an emergency measure to prop up the dam, are inadequate”.
- h) On March 7, 1968, a District engineer wrote to Karobil stating, among other things, that the engineer considered the dam to be “inadequate against overturning” and to be “a hazard”. The engineer directed Karobil to “present a proposal to make the dam safe” and failure to do so by April 15, 1968, would result in an order to remove it.
- i) On April 30, 1968, the District engineer issued an order under s. 37 of the *Water Act*, stating that the dam could overturn such that “storage of water behind the dam creates a hazard” and, therefore, Karobil must “cease storing water behind the dam and ... [must] maintain the dam sluiceway fully open”.
- j) There continued to be interactions and communications amongst Karobil, the District, and the Comptroller.
- k) On June 25, 1968, the Comptroller wrote to Karobil, indicating he had personally inspected the dam. The letter also noted that:
- i. the plans for the dam were inadequate;
 - ii. the construction of the dam had not followed the plans as the base was considerably less, “the whole Dam [had] been built backwards”, and the spillway completely altered;
 - iii. the District engineer could not confirm the placement of the shear dowels or other reinforcing; and

- iv. the engineer had been correct not to accept Karobil's engineer's conclusion that the dam was safe.
- l) However, in light of the relatively small quantity of water impounded by the dam, its failure would not pose a hazard to the downstream rail tracks, and therefore there was "no further necessity for Water Rights Branch involvement in the safety of the Dam".
- m) Clause K of the conditional water license and the Ministry's instructions in the March 7, 1968 letter and April 13, 1968 order were rescinded.

[25] Based on the foregoing, the plaintiffs allege that the Province breached its duty to warn subsequent owners of the Property that the dam was built deficiently and unlawfully given the preceding history.

[26] The ANOCC also contains numerous paragraphs relating to the history of disclosure of information to the plaintiffs about the dam (at paras. 51–70). Mr. Penner deposed that after he received the September 2018 letter from the Ministry, he made requests for information and disclosure of documents regarding the history and construction of the dam, including invoking the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 ("FOI Process"). He maintained that he received minimal information until he received disclosure from the Crown relating to the prosecution.

[27] The plaintiffs allege they have suffered damages in an amount over \$25,000, which is comprised of the costs to defend the criminal proceedings, to hire an engineer and follow the Ministry's recommendations, and the FOI Process.

E. The Relevant Statutory Regime

[28] As noted, the facts in the ANOCC span the period from 1967 to the present.

[29] When the dam was built, the applicable legislation was the *Water Act*, R.S.B.C. 1960, c. 405. Under s. 50 of that statute, the Comptroller and others exercising authority under that legislation had immunity from civil claims.

[30] Moreover, prior to 1974, the Crown enjoyed virtually absolute immunity. That did not change until the passage of the *Crown Proceedings Act*, S.B.C. 1974, c. 24, which abolished the requirement that the proceedings against the Crown had to be by way of “petition of right”, and subjected the Crown to “all those liabilities to which it would be liable if it were a person”: s. 2(a)–(c).

[31] The earliest date that the plaintiffs could claim they suffered damage by the alleged failure to warn is when they bought the Property in 2002. At that time, the applicable legislation was the *Water Act*, R.S.B.C. 1996, c. 483 [*Water Act*]. Since 2014, the regulation of water and works in and around streams is governed by the *WSA* and related legislation.

[32] The *Water Act* created a comprehensive scheme governing the diversion and use of water including the authorization and liability for works built in and about streams. This comprehensive scheme has been continued with additional terms in the *WSA*.

[33] Section 2 of the *Water Act* vested all surface water in British Columbia in the Crown (now s. 5 of the *WSA*). Applicants could gain the right to divert and use water by obtaining a license, but that license was always subject to the statute and any orders issued under it:

6 The exercise of every right held under a licence is always subject to this Act and the regulations, the terms of the licence, the orders of the comptroller and the engineer and the rights of all licensees whose rights have precedence.

[34] Licenses could also authorize “works” that support the licensed use of water, including a dam. The definition of works in the *Water Act* was contained in s. 1 (a similar but more comprehensive definition is contained in s. 1 of the *WSA*):

"works" means

(a) anything capable of or used for

(i) diverting, storing, measuring, conserving, conveying, retarding, confining or using water,

(ii) producing, measuring, transmitting or using electricity, or

- (iii) collecting, conveying or disposing of sewage or garbage or preventing or extinguishing fires,
 - (b) booms and piles placed in a stream,
 - (c) obstructions placed in or removed from streams or the banks or beds of streams, and
 - (d) changes in and about a stream,
- and includes access roads to any of them.

[35] Section 21 of the *Water Act* set out the responsibilities of license holders:

- 21** (1) A licensee, holder of an approval or person who makes a change in and about a stream in accordance with the regulations must
- (a) exercise reasonable care to avoid damaging land, works, trees or other property, and
 - (b) make full compensation to the owners for damage or loss resulting from construction, maintenance, use, operation or failure of the works.
- (2) Subject to subsection (1), a holder of a licence for power purpose, waterworks purpose or irrigation purpose may fell and remove any tree and remove any rock or other thing that endangers the holder's works.

[36] These duties remain and are enhanced in s. 29 of the *WSA*:

- 29**(1) The following persons must exercise reasonable care to avoid damaging land, works, trees or other property of another person:
- (a) an applicant for an authorization, change approval, drilling authorization or permit;
 - (b) the holder of an authorization, change approval, drilling authorization or permit;
 - (c) a person who, in accordance with the regulations or an order of the comptroller, a water manager or an engineer, makes changes in and about a stream or diverts or uses, including stores, water.
- (2) A person referred to in subsection (1) (a), (b) or (c) must properly inspect, maintain and repair works constructed, operated or used by the person,
- (a) in accordance with any prescribed requirements,
 - (b) in accordance with an order, and
 - (c) in a manner that ensures that the works do not cause a significant risk of harm to public safety, the environment, land or other property.
- (3) When an authorization, change approval or permit that authorizes the construction or use of works is abandoned, cancelled or expires, the holder or former holder, as applicable, of the authorization, change approval or permit must ensure that the works are deactivated or decommissioned in accordance with the regulations and orders.

(4) A person referred to in subsection (1) (a), (b) or (c) is liable to owners of land or premises for damage or loss resulting from the construction, maintenance, use, operation or failure of the person's works.

(5) Subject to subsections (1) to (4), a holder of a licence for a power purpose, a storage purpose, a waterworks purpose or an irrigation purpose may fell and remove any tree, and remove any rock or other thing, that endangers the holder's works.

[37] Section 25 of the *Water Act* stipulated that license holders' responsibilities persist even if the license is abandoned or terminated:

25 The abandonment, suspension, termination or cancellation of all or part of the rights held under a licence or approval does not relieve the owner of the land, mine or undertaking to which the licence or approval is or was appurtenant of liability for damage resulting from the works constructed, operated or maintained by the owner, or from a defect, insufficiency or failure of the works.

[38] Although worded differently, this provisions also exists in the *WSA*:

122 The abandonment, suspension, termination or cancellation of all or part of the rights held under an authorization or change approval, or all or part of the permission held under a change approval, permit or drilling authorization, does not relieve any of the following persons of liability for damage resulting from the works owned, operated or maintained by the person, or from a defect, insufficiency or failure of those works:

(a) the owner of the land, mine or undertaking to which the authorization, change approval, permit or drilling authorization is or was appurtenant;

(b) the holder or former holder, as applicable, of the authorization, change approval, permit or drilling authorization.

[39] Section 48 of the *Water Act* provided immunity to the comptroller and other public officials from claims for the good faith performance or non-performance of duties imposed under the legislation:

48 An action may not be brought against the comptroller or a regional water manager, engineer, officer, registrar, water recorder, water bailiff, arbitrator or person authorized under section 12.1 (6) for anything done or left undone by the person in good faith in the performance or intended performance of an authority conferred or duty imposed under this Act or the regulations.

[40] This, too, has been maintained in the *WSA*, although worded differently:

119(1) Subject to subsection (2), no legal proceedings for damages lies or may be commenced or maintained against the comptroller, a water manager, an engineer, an officer, a registrar, a water bailiff or a person authorized under section 18 (7) [quick licensing procedures] for anything done or omitted

(a) in the performance or intended performance of any duty under this or another enactment, or

(b) in the exercise or intended exercise of any power under this or another enactment.

(2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by the person in bad faith.

(3) Subsection (1) does not absolve the government from vicarious liability arising out of anything done or omitted by a person referred to in that subsection for and for which the government would be vicariously liable if this section were not in force.

[41] In addition, the *WSA* contains the following limitation:

121(1) Except as otherwise provided in this Act or by regulation, no compensation is payable by, and no legal proceedings may be commenced or maintained against, the government or any other person for or in relation to loss or damages arising from an effect on

(a) an application under this or another enactment,

(b) rights under a licence or use approval,

(c) permission given under a change approval, permit, drilling authorization or order,

(d) permission given under another enactment,

(e) resource rights conferred by Crown grant, or

(f) rights and privileges in relation to land and resources

resulting under the provisions of this Act, the regulations or an order from any of the following:

(g) a change in precedence of water rights;

(h) a restriction or prohibition on the exercise of rights or a permission provided under this Act or a former Act;

(i) a restriction or prohibition on an application, or the exercise of rights, under another enactment;

(j) a restriction or prohibition on the exercise of a private right or privilege in relation to land or resources;

(k) a restriction or prohibition on the transfer of an appurtenancy or the amendment of an authorization, change approval or permit;

(l) a change of or the imposition of new terms and conditions on an authorization, change approval, permit or drilling authorization.

(2) For certainty, except as provided by regulation, no expropriation or injurious affection occurs as the result of this Act or a regulation or the exercise of a power or performance of a duty under this Act.

[42] The WSA also contains a privative clause:

120 Except as otherwise provided in this Act or on a question of law,

(a) a hearing, investigation or proceeding of the comptroller, a water manager, an engineer, an officer or a water bailiff must not be questioned, reviewed or restrained by any process or proceeding in any court, and

(b) an order of the Lieutenant Governor in Council, the minister, the comptroller, a water manager or an engineer is final and must not be questioned, reviewed or restrained by any process or proceeding in any court.

III. IS THE CLAIM BOUND TO FAIL?

[43] The Province submits that relevant case law is directly on point and demonstrates that the plaintiffs' claim has no chance of success. The plaintiffs contend that triable issues exist and, therefore, the claim should not be struck.

[44] The plaintiffs seek damages pursuant to the law of negligence. The parties do not dispute the general legal principles and applicable test to be applied in the circumstances of someone seeking damages for negligence in a regulatory scheme. However, their positions differ most significantly on two issues: (i) the extent to which a Court of Appeal decision is determinative of the issue in this application; and (ii) how to approach and resolve the issue of proximity.

A. Legal Principles

1. Application to Strike under R. 9-5(1)(a)

[45] Under R. 9-5(1)(a), a court has the power to strike a claim when it is plain and obvious that it does not disclose a reasonable cause of action.

[46] Because the application to strike is determined under the assumption that the pleaded facts are true, the court must determine the prospect of success only on the basis of the pleadings. While the court should take a generous approach to

allegations, it can treat bald or fanciful allegations with scepticism: *Tekamar Mortgage Fund Ltd. v. British Columbia*, 2023 BCCA 20 at para. 63.

[47] The purpose of the rule is to weed out claims that have no prospect of success to promote efficiency by reducing the time and expense of litigation, even where complex questions of law or policy are involved: *Atlantic Lottery Corp Inc. v. Babstock*, 2020 SCC 19 at para. 19.

[48] The plaintiffs accept these tenets as accurate but emphasize that courts have expressed caution about determining the issue of proximity at a preliminary stage: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 47.

2. Waterway Houseboats

[49] The parties agree that determining the existence of a duty of care in the context of a regulatory scheme requires an extra layer in the negligence analysis. They also agree that the applicable test comes from *Waterway Houseboats Ltd. v. British Columbia*, 2020 BCCA 378 [*Waterway Houseboats*]. Before setting out the test, some explanation of the background facts in that case is helpful.

[50] In 2012, a debris flood caused damage to properties bordering Sicamous Creek. Those property owners (for convenience, I will refer to them as “Vinco”) sued the Province, the District of Sicamous, and a private property owner (“McLaughlin(s)"). Vinco alleged that the damage caused by the 2012 flood was the result of inadequate action taken by the three defendants after a similar flood that occurred in 1997. The dispute focussed on the reconstruction of a private bridge that provided access to the McLaughlin property and the restoration of the creek channel commissioned after the 1997 flood.

[51] During the 1997 flood, acting under emergency powers, the Province removed McLaughlin’s bridge, which caused the water level to drop immediately. After that, the three defendants and other government authorities engaged in consultations and negotiations for the bridge’s reconstruction and for channel restoration. There was significant controversy amongst them about those plans.

[52] The McLaughlins hired an engineer who opined that the bridge could be replaced at the same height as the bridge that was removed. However, the Ministry of Environment's engineer responsible for the new bridge's approval, Paul Doyle, informed the McLaughlins that the bridge had to be at least one metre higher.

[53] The former owner of Vinco's property (the "Maurer(s)") objected to the raised bridge height. Ultimately, a compromise was reached, and Mr. Doyle approved plans for a bridge of at least 0.6 metres higher (rather than one metre) provided that the design was: (i) signed off by two qualified professional engineers; and (ii) approved by the district. However, the latter condition was later removed.

[54] Despite the conditions listed above, the McLaughlins went ahead with the bridge reconstruction without the involvement of a qualified engineer.

[55] Regarding the channel restoration, the district provided approval for that with numerous conditions, including specifying the riprap required. When that work was completed, Mr. Doyle was of the view that the channel was too narrow, and that improper riprap had been used.

[56] Vinco bought its property from the Maurers between 2003 and 2005. In 2012, after rapid snowmelt and heavy rains, the creek had high water flows charged with sediment and debris, which caused the water to erode the bank of the creek above the bridge, flushing out large boulders, trees and other debris into Mara Lake. The Vinco property, among others, was substantially damaged.

[57] Vinco sued the defendants. The trial judge held the Province to be liable to Vinco for Mr. Doyle's negligence for his approval of the bridge height.

[58] The Court of Appeal overturned that conclusion, undertaking a comprehensive review of the proper approach to proximity and related issues in the context of a regulatory scheme at paras. 197–290. The Court of Appeal concluded that the trial judge erred — holding, instead, that no *prima facie* duty of care existed between the Province and Vinco.

3. *The Test from Waterway Houseboats*

[59] At para. 200, the Court of Appeal sets out the duty of care test, citing *Anns v. Merton London Borough Council*, [1978] A.C. 728 (U.K.H.L.); *Cooper v. Hobart*, 2001 SCC 79; and *Carhoun & Sons Enterprises Ltd. v. Canada (Attorney General)*, 2015 BCCA 163, which they then clarify, at para. 243, for the specific context of government regulator.

[60] The test is comprised of the following questions:

- a) Is there a sufficiently analogous precedent that definitively determined the existence or non-existence of a duty of care in the circumstances? If so, the enquiry ends.
- b) If not, was the harm suffered by the plaintiff reasonably foreseeable?
- c) If so, is there a sufficiently proximate relationship between the plaintiff and the defendant to impose a *prima facie* duty of care, taking into account:
 - i. stage one – whether the legislative scheme shows an intention to impose or preclude a private law duty of care;
 - ii. stage two – if the legislative scheme is not determinative, whether specific interactions between the regulator and the plaintiff give rise to a duty of care;
- d) Are there residual policy considerations that negate a *prima facie* duty of care?

[61] Regarding proximity, the provisions of the governing legislation are fundamental to the analysis. The Court of Appeal noted that “a public law duty aimed at the public good does not generally provide a sufficient basis to create proximity, even for individuals affected by the scheme”: *Waterway Houseboats* at para. 237. However, “even where statutory provisions do not directly create a relationship of proximity, it is still possible to find the existence of such relationship based on

specific interactions” between the plaintiff and the government’s statutory duties: at para. 236.

[62] The Court then summarized and expanded upon its previous decision in *Cobble Hill Holdings Ltd. v. British Columbia*, 2020 BCCA 91, regarding private law duties owed by a public authority acting in a regulatory role:

[243] There are two stages to the proximity analysis when determining whether a duty of care is owed by a government regulator. At the first stage, the task is to determine whether the statutory scheme discloses a legislative intention to exclude or confer a private law duty of care. At the second stage, if the legislation is not determinative, courts must look to the interaction between the regulator and the plaintiff to determine whether a sufficiently close and direct relationship exists to impose a *prima facie* duty of care:

Stage one: the legislative scheme

- The existence of a legislative scheme does not foreclose the possibility of finding proximity, but it is generally insufficient on its own to establish proximity: *Cobble Hill* at para. 66; *Wu* at para. 54.
- At the first stage, the task is to determine whether the statute discloses a legislative intention to exclude or confer a private law duty of care: *Cooper* at para. 43; *River Valley Poultry* at para. 66; and *Imperial Tobacco* at para. 44.
- The first step is to identify the purpose of the legislation: *Cooper* at para. 43; *Taylor* at para. 76; and *Imperial Tobacco* at para. 44.
- Public law duties aimed at the public good do not generally create private law duties, even if the plaintiff is a person who benefits from the proper implementation of the scheme: *Wu* at para. 56.
- However, a statutory duty to act can be a strong indicator of an intention to create a private law duty of care: *Fullowka* at paras. 37–55; and *Elder Advocates* at para. 72.
- A private law duty is unlikely to be recognized if it conflicts with the public authority’s duty to the public: *Los Angeles Salad* at paras. 39–40; *Cobble Hill* at para. 66; *Taylor* at para. 78; *Wu* at para. 57; and *Imperial Tobacco* at para. 44.
- Where the legislative scheme requires the government actor to exercise its powers having regard to multiple interests, including both the public interest and private interests, the legislation cannot be interpreted as expressly prohibiting consideration of a regulated party’s interests: *Carhoun* at para. 104.
- It may be inferred that the legislature did not intend to create a private law duty of care where a statutory scheme provides

immunity to the regulator or creates remedies for injured parties other than tort remedies: *Taylor* at para. 78; and *River Valley Poultry* at para. 67.

- The proximity analysis considers specific and limited policy considerations arising from the statute itself. The object is to determine whether there is a sufficiently close relationship between the claimant and the government authority. At the first stage, the policy considerations are relevant as the court is considering whether the legislature imposed proximity on two persons who had never met each other: *Carhoun* at para. 96; and *Cooper* at paras. 37–39.

Stage two: interactions between the parties

- If the legislative scheme is not determinative, courts then consider the specific circumstances of the interactions between the regulator and the plaintiff to determine if a close and direct relationship exists sufficient to establish proximity: *Imperial Tobacco* at para. 50; and *Taylor* at para. 79.
- Findings of proximity based on the interactions between the regulator and the plaintiff are necessarily fact-specific: *Taylor* at para. 80.
- Proximate relationships may involve physical closeness, direct relationships or interactions, or the assumption of responsibility; or may turn on expectations, representations, reliance, or the nature of property or other interests involved. In short, proximity recognizes those circumstances in which one individual comes under an obligation to have regard for the interests of another so as to be required to take care not to act in a manner that would cause injury to those interests: *Cooper* at paras. 32–34; and *Wu* at para. 51.
- Courts have found a duty of care where there is a relationship and connection between the regulator and individual that is distinct from, and more direct than, the relationship between the regulator and that part of the public affected by the regulator’s work: *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41 [*Hill*] at para. 33; *Fallowka* at paras. 44 and 55; and *Taylor* at paras. 80–87.
- Courts have also found interactions between the plaintiff and regulator to create a duty of care where the nature of the duty imposed by the legislative scheme is consistent with the existence of a private law duty to an individual plaintiff: *Taylor* at para. 88; and *Hill* at paras. 36–41.
- Policy has a more limited role at the second stage of the proximity analysis where the regulator and the regulated party are in a direct transactional relationship: *Cooper* at paras. 37–39; and *Carhoun* at para. 96.

[244] Before applying these principles, it is important to recognize the distinction between (i) situations in which the actions of the regulator directly impact on the plaintiff as the regulated party and cause harm to that plaintiff, and (ii) situations in which the harm to the plaintiff is caused by the actions of a third party (and the plaintiff's claim is that the regulator should have acted to prevent the actions of that third party): *Taylor*, at para. 87. Both *Cooper* and *Imperial Tobacco* serve as examples of the second situation. The Plaintiffs' claim also fits into this second category. The Province, as regulator, did not directly harm the plaintiff; rather, the Works done by the District and the McLaughlins caused the harm, and the Plaintiffs allege that the Province should have acted to prevent that harm.

4. Application of the Test in Waterway Houseboats

[63] The Court of Appeal concluded that the trial judge erred in finding the Province liable in negligence to Vinco. I highlight only what is most germane to the issues before me in this case. First, the judge had failed to consider proximity by way of the two-stage analysis above: at para. 258. Second, the judge had conflated the position of the plaintiffs and the "regulated parties", thus generalizing from a specific interaction between Mr. Doyle and the McLaughlins to find that a specific interaction occurred between Mr. Doyle and Vinco, even though Vinco had no interaction with either the Province or Mr. Doyle: at para. 259.

[64] The Court then conducted the stage one analysis, highlighting the factors that militate against a private law duty of care to the plaintiffs, including: the purpose of the legislation; statutory compensation scheme; no statutory duty to act; building inspector authorities distinguished; privative clause; and indeterminate liability: at para. 265. Then the Court concluded that the *Water Act* did not impose a private duty of care in favour of members of the public:

[266] The statutory purpose of the *Water Act* is to promote a public good for the benefit of all members of the public; it is not directed at a particular class of or individual members of the public. In order to effect the *Act's* statutory purpose, regulators are given broad powers that they are to exercise taking into account a wide variety of interests. The approvals necessarily cover an extremely broad range of activities carried on throughout the province by a large number of people. In sum, the legislation does not evince any intention on the part of the legislature to create a private law duty of care *vis-à-vis* individual property owners. To the contrary, ss. 48 and 49 grant immunity to regulators and set out a strong privative clause limiting the ability to challenge approvals or orders, indicative of an intention to foreclose a private law duty of care. Further, s. 21 provides a robust

statutory compensation scheme for property owners who are injured by works installed pursuant to the grant of approvals or changes made in or about a stream. This also strongly indicates that the legislature had no intention to create but rather foreclosed a private law duty in favour of those property owners.

[267] As such, on a proper interpretation of the statute, we conclude that it is not possible to find sufficient proximity between a regulator acting under s. 9 of the *Water Act* and a member of the general public in the position of the Plaintiffs. ...

[Emphasis added.]

[65] Notwithstanding that conclusion, the Court of Appeal also addressed stage two analysis, looking at the interactions between the parties, emphasizing that the interactions must be “directly with the claimant”: at para. 276. It was also significant that the approvals in that case were issued for no other purpose than what was reflected in s. 9 of the *Water Act*: at para. 288. Ultimately, the Court concluded that there was no representation to Vinco by Mr. Doyle, nor was there a basis for Vinco’s reliance on him, thus obviating a finding that there was a sufficiently close relationship to establish a *prima face* duty of care: at para. 290.

B. Analysis: Analogous Precedent

[66] The Province submits that *Waterway Houseboats* conclusively held that the *Water Act* precludes a duty of care to members of the public who could be harmed by defective works. Its position is that any alleged breach in the ANOCC occurred well before the plaintiffs owned the Property, meaning they were in no different position than a member of the public. Thus, the answer to the first question in the test is “no” and the inquiry ends.

[67] The plaintiffs do not agree that *Waterway Houseboats* defeats their claim. They point out that the Court of Appeal left open the possibility that a regulator might owe a regulated party a duty of care because of their interactions: at paras. 294–297.

[68] That proposition is sound, but the key issue in this case is whether the plaintiffs can be considered to be “regulated parties”, in the same manner that the McLaughlins were in *Waterway Houseboats*.

[69] This issue is resolved by looking at what is pleaded in the ANOCC. I pause to note that certain points raised by the plaintiffs in their application response and submissions do not appear in their ANOCC. Since neither the response nor argument are pleadings, for the purpose of the application under R. 9-5(1)(a), I will only address those issues explicitly mentioned in the ANOCC.

[70] In the “Part 3: Legal Basis” of the ANOCC at para. 1B, the plaintiffs plead:

Province had a duty to warn subsequent owners of the Property that the Dam was built deficiently and unlawfully in light of the Province’s knowledge of the history of the Dam’s construction and the Province’s knowledge that subsequent owners would be legally responsible for the Dam.

[71] Paragraph 2 under the same heading pleads:

The Province knew that the Dam was defective and that it was built unlawfully. The Province chose to withhold that information from the public all the while knowing that any purchaser of the Property would by law become responsible for the Dam. Then the Property moved through a succession of owners, including the plaintiff, who were unaware that the Dam was defective and unlawfully built.

[72] Paragraph 2B in Part 3 states:

In this case, there are no additional considerations which ought to negate, or to reduce or limit the scope of the duty or the class of person to whom it is owed or the damages to which a breach of it may give rise. It would have been simple for the Province to place a notice on CWL 32042 and carry that notice through to CWL 110581 that the construction of the dam involved unremedied breach of the *Water Act*. There is no bona fide policy reason for immunizing the Province from liability in the facts of this case.

[73] These pleadings do not explicitly identify a key date or date range attached to particular actions or inactions alleged to arise to a breach of the duty to warn. Reading these pleadings, generously, still raises several possibilities as to the applicable time frames.

[74] The primary claim is that the Province had a duty to warn “subsequent owners” that the dam was built deficiently. I assume the plaintiffs meant to refer to “subsequent potential purchasers”, since a duty to warn is intended to provide notice and knowledge to someone before the purchase or use of a product, or in this case,

before purchasing the Property. Since any member of the public could purchase the Property after Karobil and/or Gaglardi owned it, this is indistinguishable from a claim brought on behalf of general members of the public.

[75] Thus, this claim is foreclosed by *Waterway Houseboats* for all the reasons discussed above from that case. I agree with the Province that *Waterway Houseboats* is a definitive analogous precedent, and the inquiry should end there.

[76] Nevertheless, I will consider the rest of the potential claims.

[77] A claim of a duty to warn based on the dam being built unlawfully is bound to fail because the dam was not unlawful. The water comptroller exercised his discretion in 1968 to authorize the dam, notwithstanding it was built without complying with the conditions. Even if that decision was flawed or wrong, an action against that water comptroller for approval given in 1968 is clearly time-barred. In addition, the decision was not actionable since, at the time, the Province enjoyed absolute immunity: see above (paras. 29–30).

[78] A claim based on the dam being built “deficiently” appears to rest on the same basis as the unlawful claim, mainly that the dam was built without first submitting plans for approval as required by clause K. I repeat my analysis above and find this claim is bound to fail.

[79] Furthermore, as noted, clause K was rescinded (para. 24(m)), meaning that, as of 1968, the dam was no longer “deficient”, in so far as the conditions placed on its construction. This argument also applies to the claim apparently raised in Part 3, para. 2B in the ANOCC that the construction of the dam involved unremedied breaches of the *Water Act*.

[80] The water comptroller removed condition K on the basis of the relatively small quantity of water impounded by the dam and his view that the dam’s failure would not pose a hazard to the downstream rail tracks (ANOCC, Part 1, para. 22). Arguably, those facts are inconsistent with the pleading that the dam was deficient. In any event, a challenge to that assessment and decision by the water comptroller

— that the dam was not a hazard — is time-barred as well as protected by the absolute immunity in place at that time.

[81] I add that the fact that MOF noticed in the fall of 2018 that the dam was in need of “immediate maintenance” is not necessarily proof that the structure of the dam was deficient. Specifically, there is no pleading or evidence that the dam failed, or if it did, that the failure caused damage to the Property or any other property. At that point, the dam had been in place for just over 50 years. It is unsurprising that it needed maintenance.

[82] What remains are the allegations that rely on a breach of some type of informational duty. There appears to be two allegations:

- a) failure to place a notice on the dam’s water licenses that the dam was defective and/or unlawfully built (Part 3, para. 2B);
- b) withholding knowledge of the defective and/or unlawful nature of the dam from the public (Part 3, para. 2).

[83] In the Part 1, at paras. 28–50 of the ANOCC, the plaintiffs outline what they categorize as the “Ministry’s Dealings with the Plaintiffs”, which include a recitation of the plaintiffs’ efforts to obtain information pursuant to the FOI Process, including filing a claim with the Office of the Information and Privacy Commission (“OIPC”). However, this narration starts with the letter sent by Christa Perzon from the Ministry in September 2018, which is about 16 years after the plaintiffs bought the Property.

[84] In the next section titled “History of Disclosure by the Province to the Plaintiffs” at paras. 51–70, the plaintiffs outline their efforts to receive disclosure from the Crown after they were charged. The plaintiffs say that they received documents from the Crown in October 2022 setting out “how Gaglardi had illegally built this deficient Dam and how the Comptroller had overruled local officials’ efforts to force Gaglardi to comply”, which were summarized in an earlier portion of the ANOCC at paras. 5–22.

[85] The point of these facts appears to be summed up at paras. 64–65:

64. On February 16, 2023, the Ministry disclosed documents to [599] as part of the OIPC inquiry process. None of the documents disclosed by the Ministry set out the story of how Gaglardi had illegally built this deficient Dam and how the Comptroller of Water Rights had overruled local officials' efforts to force Gaglardi to comply. Additionally, several full pages were noted as missing/redacted.

65. By issuing the [2019 Order] and amendments to it, by prosecuting the plaintiffs and by refusing to disclose the history of the Dam, the Province sought to have the plaintiffs do and fund what Gaglardi was to have done in 1968. The Province has tried and continues to try to have unsuspecting members of the public (including the plaintiffs) fix a problem that Gaglardi caused and the Government actively tried to cover up.

[86] The only link drawn between the above facts to the claims in Part 3 is the allegation that the “Province chose to withhold that information from the public”. However, reading the ANOCC, there is a material gap in the factual narrative. The plaintiffs bought the Property in 2002, but the facts underlying the disclosure allegations occurred more than 16 years after that. I cannot see how the plaintiffs can establish they suffered damage by a “failure to warn”, when they have not pleaded any representations or reliance by them prior to buying the Property.

[87] Instead, paras. 64–65 imply that the Ministry's and/or MOF's disclosure pursuant to the plaintiffs' FOI request was inadequate. However, the plaintiffs' remedy for that would lie with the OIPC.

[88] In addition, it is unclear how anything about the alleged inadequate disclosure is actionable in negligence. I specifically note there is no plea in the ANOCC of malicious prosecution, malfeasance of office, or bad faith.

[89] Furthermore, as the statutory regime is the underpinning for the negligence claim in this context, the plaintiffs have pointed to no provision of the *Water Act* or *WSA* that would purport to place positive obligations on the Province regarding disclosure of historical licensing information.

[90] For all those reasons, I agree with the Province that *Waterway Houseboats* is a complete answer in defeating the plaintiffs' claim because there can be no *prima*

facie duty of care owed to the public. In my view, the plaintiffs' pleadings do not place them in any different position than a member of the public. That being the case, the inquiry ends.

[91] Nevertheless, I will continue and analyze one other issue.

C. Analysis: Direct Interactions

[92] If I had found *Waterway Houseboats* was not determinative as to the existence of a duty of care, and assuming without deciding that the alleged harm in this case was foreseeable, the next issue is to ask whether there was a relationship of sufficient proximity based on direct interactions between the plaintiffs and the Province so as to impose a *prima facie* duty of care.

[93] The Province's position is that the plaintiffs cannot succeed on this ground because they have not pleaded in the ANOCC any direct interactions with the regulator. However, the plaintiffs submit that their interactions with the regulator need not be "direct" to meet the test. They rely on the Court's proposition in *Waterway Houseboats* that a "regulator's general representations to the plaintiff class ... and its statutory duty [may be] sufficient to give rise to a relationship of proximity": at para. 277. The plaintiffs assert in this case that representations were made to a "limited class of person who might acquire a license" authorizing this particular dam, or who might buy the Property.

[94] With respect, that is an incomplete interpretation of para. 277. The Court of Appeal noted in the immediately preceding paragraph that "the case law supports the proposition that specific interactions must be directly with the claimant": at para. 276. The Court then continues to discuss the case relied on heavily by the plaintiffs here, *Taylor v. Canada (Attorney General)*, 2012 ONCA 479:

[277] Also contrary to the Plaintiff's submissions, the finding in *Taylor* was based on specific misrepresentations by the regulator to the plaintiff class about the safety of the medical device, combined with a failure by the regulator to stop the import and sale of the device. While there were no specific interactions between the regulator and the plaintiffs, the regulator's general representations to the plaintiff class (namely, the users of the medical

device) and its statutory duty were sufficient to give rise to a relationship of proximity.

[Emphasis added.]

[95] In fact, the same logic underlying the plaintiffs' argument on this point was considered and rejected by the Court of Appeal in *Waterways Houseboats*:

[287] It is also difficult to see how the judge could consider Mr. Doyle's issuance of the approvals as support for his conclusion on the proximity analysis. The purpose of the analysis is to examine the closeness or nature of the relationship between the regulator and the regulated parties. ...

[288] There is no suggestion that the approvals were issued for any purpose other than those reflected in s. 9 of the *Water Act*. Neither the Plaintiffs nor the McLaughlins could rely on the approvals as if they were "designs", as such reliance would clearly be outside of the purpose for which the approvals were issued. ...

[289] We have already indicated that there is nothing in the *Water Act* that would permit the judge to conclude that the Plaintiffs as future owners of property near the McLaughlin Bridge were entitled to expect that the Works were completed "up to code". And yet that is the import of his conclusion.

[290] As there was no representation to the Plaintiffs by Mr. Doyle—let alone a misrepresentation—and no basis for reliance, it is not possible to find a sufficiently close relationship to establish a *prima facie* duty of care. As such, even if the legislation did not preclude a private law duty of care to the plaintiffs (which we conclude that it does), there was no relationship between the parties sufficient to establish such a duty.

[Emphasis added.]

[96] That reasoning is directly applicable to the facts in this case.

[97] Furthermore, the ANOCC does not contain any facts that the plaintiffs had any interaction or heard, or were aware of, any representation about the dam other than the correspondence that eventually led to the issuance of orders and prosecution in 2018. In other words, they have not even pleaded that representations were made by the Province about the dam, whether to them or any other identifiable class.

[98] Even if the issuance of a permit amounted to a representation (which I find it clearly cannot), the plaintiffs' claim faces another problem. There is nothing in the ANOCC suggesting that they made any effort before purchasing the Property to look

into the history of the dam. Nor have they identified — in their pleadings, their response, or written submission — any statutory or regulatory provision requiring the Province to publish or attach a history of a dam's approval to subsequent license holders, property owners, or the public at large.

[99] For all those reasons, even if I had not concluded that the claim had no prospect of success because *Waterway Houseboats* precludes the existence of a private duty of care, I would have found that the plaintiffs have failed to plead any direct interactions with the Province that could support a finding of proximity. Nor do the facts and circumstances of this case, whether pleaded or not, support such a finding.

IV. CONCLUSIONS

[100] I find that the ANOCC must be struck pursuant to R. 9-5(1)(a) as it has no chance of success, for all the reasons contained in this judgment. That being the case, I find it unnecessary to address the parties' submission about abuse of process under R. 9-5(1)(d).

[101] The Province is entitled to its costs; however, it sought special costs. If that position is maintained, the parties have leave to file brief written submissions on the issue of special costs as follows:

- a) No later than 14 days after the date of this judgment, the Province shall deliver to the plaintiffs submissions on special costs of no more than five pages.
- b) No later than 28 days after the date of this judgment, the plaintiffs shall deliver to the Province their response to the Province's costs submissions of no more than five pages.
- c) No later than 35 days after the date of this judgment, the Province may, if it chooses, deliver to the plaintiffs reply submissions of no more than two pages.

- d) The Province shall deliver to Supreme Court Scheduling at the Vancouver Law Courts all submissions accompanied by a brief letter addressed to my attention as soon as possible after delivering its reply to the plaintiffs. I would kindly ask, if possible, that the Province arrange to have someone deliver the letter and submissions to the counter rather than sending by email so that staff can be alerted to these paragraphs, which permit the filing of material with Supreme Court Scheduling rather than with the Registry.

- e) The parties can agree to extend the deadlines contained above, but no extension can result in submissions being delivered to Supreme Court Scheduling more than 60 days after the date of this judgment. If any further extension is sought, the parties must file a request to appear before me to seek that extension.

“Sharma J.”