COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Pasquill v. British Columbia (Securities Commission),* 2025 BCCA 287

Date: 20250813
Docket: CA49573

Between:

Vicki Irene Pasquill and Vicker Holdings Ltd.

Appellants
(Defendants)

And

British Columbia Securities Commission

Respondent
(Plaintiff)

And

Earle Douglas Pasquill

Respondent
(Defendant)

Before: The Honourable Mr. Justice Groberman
The Honourable Justice Edelmann
The Honourable Justice Gomery

On appeal from: An Order of the Supreme Court of British Columbia, dated December 6, 2023 (*British Columbia Securities Commission v. Pasquill*, 2023 BCSC 2150, Vancouver Docket S188653).

Counsel for the Appellants:	J.K. McEwan, K.C. J.E.E. Roberts
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Place and Date of Hearing:	Vancouver, British Columbia December 10, 2024
Place and Date of Judgment:	Vancouver, British Columbia August 13, 2025

Written Reasons of the Court:

Summary:

In 2015, the BC Securities Commission found Earle Pasquill to have breached the Securities Act by participating in a fraudulent scheme. It ordered that he disgorge $21.7 million and pay an administrative penalty of $15 million. In 2018, the Commission brought an action to collect the outstanding amount. The notice of claim included claims against the "Vickers Defendants" (Earle Pasquill's wife and a company controlled by her). The Commission sought equitable relief against them on the basis that they received proceeds of the fraud.

In 2020, the Securities Act was amended to allow the Commission to advance claims against family members who received "claimable property" from persons involved in fraudulent schemes. The statutory remedy is retroactive and extends beyond existing equitable doctrines.

In 2021, the Vickers Defendants applied to strike the claim against them, and the Commission applied to amend the claim (including the addition of a statutory claim under the 2020 amendments). The court struck most of the claims against the Vickers Defendants and also refused the Commission's amendment application. It did, however, grant the Commission liberty to apply for more limited amendments seeking relief under the statutory amendments.

The Commission ultimately made an application and was successful. The Vickers Defendants appeal, arguing that the 2021 order effectively dismissed the claim against them, such that there was nothing to amend. They also contend that the amendments are factually and legally distinct from the originally pleaded cause of action, such that they cannot be characterized as mere amendments and must be treated as a new cause of action. The new cause of action, it is contended, is statute-barred by the effluxion of time.

Held: Appeal dismissed. The judge made no error in accepting the amendments to be appropriate and not to constitute a new, distinct, cause of action.

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Reasons for Judgment of the Court:

Overview

[1] This appeal is the latest instalment in a long-running collection proceeding. The issue involves the application of a limitation provision contained in s. 159(1) of the *Securities Act*, R.S.B.C. 1996, c. 418. The limitation period is six years.

[2] The claim in dispute is brought by the British Columbia Securities Commission against the appellants, Vicki Pasquill and Vicker Holdings Ltd., in an action (the "Collections Action") commenced in 2018. At the earliest, the limitation period began to run in 2015 and there is no doubt that the Collections Action, as originally pleaded, was commenced in time. However, the Commission relies on amendments to the notice of civil claim that it advanced on March 10, 2023. Those amendments depend on legislative changes brought into force, with retrospective effect, in 2020. The appellants say that the amendments advance a new cause of action after the six-year limitation period expired.

[3] The chambers judge was faced with competing applications: by the Commission, for leave to amend the notice of civil claim; and by the appellants, for summary judgment dismissing the Collections Action. In reasons indexed at 2023 BCSC 2150, he concluded that "this complicated and novel proceeding should be determined at trial rather than on a summary application such as the present" (at para. 7). He granted the Commission leave to amend and dismissed the appellants' application.

[4] The judge arrived at this conclusion by two independent avenues. First, he found that the amendments flow from facts previously pleaded in the Collections Action (at paras. 89–93). He said that "the Commission does not seek to advance a fundamentally different claim, and no limitation issue is engaged" (at para. 92). Second, he held that the limitation period could not begin to run before the legislation authorizing the claim came into force in 2020 (at paras. 94–101).

[5] Whether an amendment raises a new cause of action is a question of law and this Court must therefore determine whether the chambers judge was correct: *Swiss Reinsurance Company v. Camarin Limited,* 2018 BCCA 122 [*Swiss Re*] at para. 26.

[6] We hold that the judge did not err in his first conclusion. The essential elements of the current claim were pleaded prior to 2020, even though its present legal basis was not. The current claim is not a fundamentally different claim. The limitation period in s. 159(1) of the *Securities Act* is not a bar to the claim. Accordingly, the appeal is dismissed. We express no opinion concerning the judge's reasoning that the limitation period did not begin to run before the legislation authorizing the claim came into force in 2020.

Background

[7] In 2015, a panel of the British Columbia Securities Commission ordered Earle Pasquill to pay $36.7 million arising from a fraud he perpetrated with others contrary to s. 57(b) of the *Securities Act*. Pursuant to s. 161(g), $21.7 million of the debt represented disgorgement of the proceeds of a fraud perpetrated on 698 investors. The Commission's order was registered as an order of the Supreme Court. An appeal of the order was dismissed: *Poonian v. British Columbia Securities Commission,* 2017 BCCA 207. Almost the entire debt remains outstanding.

[8] In 2018, the Commission commenced the Collections Action in the Supreme Court against Mr. Pasquill, Vicki Pasquill and Vicker Holdings Ltd. Ms. Pasquill is married to Mr. Pasquill. She is a retired teacher and the sole shareholder of Vicker Holdings. The premise of the Collections Action was that Mr. Pasquill had transferred property worth more than $17 million to Ms. Pasquill and Vicker. The Commission hoped to get at that property to satisfy the debt. The Commission pleaded claims based on legal theories of knowing receipt, unjust enrichment, fraudulent conveyance, and fraudulent preference. It sought to trace funds fraudulently obtained by Mr. Pasquill into assets held by Ms. Pasquill and Vicker. They took the position that the Collections Action was fundamentally legally deficient.

[9] In 2019, the Legislature enacted amendments to the *Securities Act*. The *Securities Act, 2019,* S.B.C. 2019, c. 38, s. 25 restructured s. 57 of the *Act* and modified its wording. The section Mr. Pasquill breached (the former s. 57(b)) is largely included in the current s. 57(2)(a). More importantly, the *Act* included a new Part 18.1 ("Preservation Orders and Additional Collection Remedies"). Part 18.1 was brought into force effective March 27, 2020.

[10] Broadly speaking, Part 18.1 provides an alternative legal basis for the claims advanced in the Collections Action. It contemplates claims for the recovery of "claimable property" from family members of persons such as Mr. Pasquill for the satisfaction of claims arising from "unlawful activity" that resulted in an order under s. 161(g) (among other sections). Importantly, the amendments are expressly retrospective; they apply in respect of events and orders preceding their enactment.

[11] In 2021, Ms. Pasquill and Vicker applied to strike the Commission's pleading in the Collections Action and have it dismissed. The Commission applied for leave to amend its pleading. The proposed amendments included claims under Part 18.1 of the *Securities Act*. In reasons indexed at 2021 BCSC 1047, Davies J. held that much of the Commission's pleading as it stood was legally deficient. Its causes of action for knowing receipt and unjust enrichment were bound to fail and the claims for fraudulent preference or fraudulent conveyance could only succeed in respect of a single transaction. Justice Davies dismissed the Commission's application to amend its pleading. He considered that too much of the proposed amended pleading was tied up with allegations that could not succeed. He did consider, however, that a viable pleading under Part 18.1 of the *Securities Act* might be appropriate and granted the Commission liberty to make a fresh application for leave to make such amendments.

[12] The Commission's further application to amend came on for hearing before the chambers judge. As noted, he allowed the application and dismissed a cross-application by Ms. Pasquill and Vicker to dismiss the Collections Action. They appeal that decision.

[13] As in the court below, the appeal turns on a legal question as to the effect of s. 159(1) of the *Securities Act*. Subject to an exception that does not arise in this case, s. 159(1) provides:

> Proceedings under this Act … must not be commenced more than 6 years after the date of the events that give rise to the proceedings.

[14] The limitation provision in s. 159(1) supplants the limitation period that would otherwise apply: *Limitation Act*, S.B.C. 2012, c. 13, ss. 3(1)(o) and 3(2).

The argument on appeal

[15] The appellants submit that advancing a new cause of action by amendment is equivalent to commencing a new proceeding and is prohibited by s. 159(1) after the expiration of the six-year limitation period. Their argument may be summarized as follows:

a) The claims previously advanced in the notice of civil claim were "struck in [their] entirety" by the order of Davies J. in 2021. The former pleading was "extinguished" and it was not open to the chambers judge to rely on it to conclude that the Commission was not commencing a new proceeding. Moreover, reliance on the former allegations, after they were struck, was an abuse of process.

b) Because the claims originally advanced were "radically defective", they did not raise causes of action at all. Consequently, the causes of action advanced by the amendments must be considered as new causes of action.

c) The 2020 legislative changes "introduced new legal consequences and, in order to claim entitlement to those consequences, the Commission had to plead a new slate of material facts". In doing so, it advanced a new cause of action, contrary to s. 159(1).

[16] The Commission submits that the appellants' argument misinterprets the order of Davies J. and misstates its effect. It submits that "the Commission's

amendments incorporate new statutory collection mechanisms … but arise out of the same core set of facts already pleaded; namely, Earle Pasquill's liability to the Commission, his transfer of a benefit to the appellants, and the Commission's claimed entitlement to that property" (at R.F. para. 53). Accordingly, the Commission denies advancing a new cause of action.

[17] Alternatively, the Commission contends that "the court still retains a residual discretion to allow amendments raising a 'fundamentally different claim' in special circumstances" (at R.F. para. 59), citing *Basarsky v. Quinlan,* [1972] S.C.R. 380 at 384–386. The appellants respond that the reasoning in *Basarsky* is not available to overcome the absolute prohibition in s. 159(1).

Issues

[18] The arguments raise the following issues:

1) What was the legal effect of the order of Davies J.?

2) Must the causes of action raised by the amendments be considered as new causes of action for limitation purposes because the former causes of action were struck?

3) Do the amendments plead a new slate of material facts giving rise to new causes of action for limitation purposes?

[19] In view of our conclusions in respect of these issues, we need not address the Commission's alternative argument that the court retains a residual discretion to allow amendments advancing a fundamentally new and different claim in special circumstances.

Analysis

1. What was the legal effect of the order of Davies J.?

[20] Three paragraphs of Davies' J.'s order are critical to an assessment of the appellants' argument. They state:

> 1. The second amended notice of civil claim is hereby struck in its entirety, except to the extent the Commission advances a claim for fraudulent preference or fraudulent conveyance arising from Vicki Pasquill's acquisition of a 50% interest in March 2012 of the property bearing civic address 23 West 7th Avenue, Vancouver, British Columbia and parcel identifier 015-555-569 (the "7th Avenue Claim");
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> …
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> 4. The plaintiff's application for leave to amend the second amended notice of civil claim is dismissed;
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> 5. The plaintiff shall be at liberty to apply on notice to the defendants to amend the second amended notice of civil claim to advance, in addition to the 7th Avenue Claim, claims based on Division 3 of Part 18.1 (Civil Actions and Forfeiture Orders) of the *Securities Act*, RSBC 1996, c 418;

[21] The appellants rely on the language of paragraph 1, emphasizing that (with one exception) it struck the second amended notice of civil claim “in its entirety”. They also rely on the dismissal of the Commission’s application to amend in paragraph 4. They dismiss paragraph 5 as insignificant, because it only addressed the possibility of new claims not advanced in the pleading that was struck. They stress that the order was made pursuant to *Supreme Court Civil Rule* 9-5(1)(a) on the basis that the second amended notice of civil claim disclosed no reasonable claim. They submit that:

> 43. The legal effect of an order made pursuant to r. 9-5(1)(a) is that the action is “stopped” or gotten “rid of”; the litigation is put to a “summary end”. Thus the legal effect of Justice Davies’ order was that, with the exception of the 7th Avenue Claim, the Second Amended Notice of Civil Claim was extinguished.

[22] We are not persuaded by this argument. The order must be read in its entirety and in the context of the reasons for judgment: *Der v. Hlookoff,* 2025 BCCA 193 at paras. 30–32. It is clear from Davies J.’s reasons that he did not consider that the action was “stopped”, “gotten rid of”, or “put to a summary end”. Instead, he accepted that the Collection Action could proceed following amendment of the second amended notice of civil claim to advance claims based on Part 18.1 of the *Securities Act.* He observed at para. 245 that “the substance of the Collection Action will now almost entirely be concerned with the enforceability of the amendments to

the *Act*". The anticipated amendments are expressly contemplated by paragraph 5 of the order.

[23] Concerning paragraph 4 of the order, Davies J. refused the application to allow the amendments proposed by the Commission at the hearing in 2021 because they relied on existing pleadings that he had found must be struck (at paras. 224–225). A redrafting of the notice of civil claim "to conform to my rulings" was required.

[24] Justice Davies dismissed the claims in the existing pleadings for several reasons, none of which precluded future claims based on Part 18.1 of the *Securities Act*.

[25] First, he held that the Commission lacked statutory authority to advance claims against the appellants for relief not specifically contemplated in the *Securities Act,* other than claims based on a fraudulent preference or fraudulent conveyance. He stated:

> [95] I find that the Commission's public interest mandate does not empower it to make the claims advanced by it against Vicki Pasquill or Vicker Holdings Ltd. in the Collection Action other than in compliance with the specific tools available to it under the Act.

[26] Part 18.1 supplements the statutory authority afforded the Commission by affording it additional "specific tools".

[27] Second, he held that the Commission could not obtain declaratory relief vis-à-vis the appellants, in relation to past allegedly wrongful conduct (at paras. 126–130). Claims based on Part 18.1 are not, other than incidentally, claims for declaratory relief.

[28] Third, he held that the trust claims and claims for knowing receipt and unjust enrichment advanced in the second amended notice of civil claim were bound to fail for reasons specific to the legal requirements of each. The Commission lacked the status of a trust beneficiary (at paras. 149 and 155–156). It had not pleaded an enrichment of the appellants at its expense (at paras. 164–166).

[29] Fourth, as to the allegations of fraudulent preferences or conveyances, with one exception, the factual allegations fell short of what was required to state a reasonable claim (at paras. 179–188).

[30] In sum, the legal effect of Davies J.'s order was interlocutory. The second amended notice of civil claim was struck with a view to an expected reformulation of the notice of civil claim. It was expected that the Commission would advance claims against the appellants under Part 18.1 and revise the notice of civil claim accordingly.

[31] Following Davies J.'s decision, it would have been an abuse of process for the Commission to have attempted to pursue the claims that were struck. Subject to the possibility of a limitation defence, it was not an abuse of process for it to pursue claims against the appellants under Part 18.1.

2. Must the causes of action raised by the amendments be considered as new causes of action for limitation purposes because the former causes of action were struck?

[32] It is not uncommon for a court to be confronted on an application to amend with an argument that the amendment presents a new cause of action that is statute-barred. Under s. 22(5) of the *Limitation Act*, this is a possibility bearing on the exercise of the court's discretion to allow or deny the proposed amendment, but the analysis as to the presentation of a new cause of action is unchanged. Leading cases include *Swiss Re* and *1100997 Ontario Limited v. North Elgin Centre Inc.,* 2016 ONCA 848 [*North Elgin*].

[33] As noted in *Swiss Re* at paras. 27–28, a cause of action is usually defined as a collection of facts entitling a plaintiff to a remedy. The appellants' argument builds on this definition to assert that, because the claims in the second amended notice of civil claim were adjudged (with one exception) bound to fail, there was no former cause of action for the Commission to build upon for limitation purposes. Whatever the earlier factual pleading, they contend that the cause of action advanced under Part 18.1 is unequivocally "new". They put their argument as follows:

> 47. The "claims" originally advanced by the Commission were radically defective, on multiple grounds, including jurisdiction, standing and temporal possibility. *They did not raise a cause of action at all because they did not (alone or taken together) support the right of the Commission to any judgment.*
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> [Emphasis in original.]

[34] The appellants' argument is misplaced because it is detached from the limitation context. The limitations issue engages an assessment of the relationship between the original claim and the claim now proposed to be advanced. The necessary analysis focuses on the factual scope rather than the legal theory of the claim. The point is illustrated by the following reasoning of Garson J.A., speaking for the Court, in *Swiss Re*:

> [34] In my view these two pleadings assert the same cause of action. The proposed amendment pleads with more particularity the consequences of the negligent conduct, but I cannot identify any claim in the proposed amended pleading that could be viewed as beyond the scope of the claims in the original pleading. The original third party notice alleged that Aon owed a duty to provide "accurate explanations of the terms" of Camarin's coverage. The amended third party notice alleges that Aon owed a "duty to advise" or "duty to warn". Both pleadings are based on the same facts. In these circumstances, the amendments to the third party notice do not constitute a different cause of action. I cannot identify any error in principle in Justice Kent's conclusion that the amended pleading advances no new cause of action.
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> [Emphasis added.]

[35] Similarly, addressing the converse situation, van Rensburg J.A. spoke for the Court in *North Elgin* and stated that:

> [23] … an amendment will be refused when it seeks to advance, after the expiry of a limitation period, a "fundamentally different claim" based on facts not originally pleaded.
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> [Emphasis added.]

[36] At para. 20, van Rensburg J.A. quoted from Morden & Perell, *The Law of Civil Procedure in Ontario,* 2nd ed., (Markham: LexisNexis Canada Ind., 2014) at p. 142:

> A new cause of action is not asserted if the amendment pleads an alternative claim for relief out of the same facts previously pleaded and no new facts are relied upon, or amount simply to different legal conclusions drawn from the

> same set of facts, or simply provide particulars of an allegation already pled or additional facts upon which the original right of action is based.
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> [Emphasis added.]

[37] The law in British Columbia is as stated in the Ontario text. In assessing for limitation purposes whether a new cause of action is being advanced, the court must ask whether the proposed pleading raises new factual issues. It makes no difference if the former cause of action, based on these same facts, was bound to fail.

[38] Accordingly, the amendments allowed by the chambers judge need not have been considered as presenting a new cause of action simply because the existing pleading had been struck.

3. Do the amendments plead a new slate of material facts giving rise to new causes of action for limitation purposes?

[39] The chambers judge conducted a detailed and careful review of the amendments. He attached the entire amended pleading as an appendix to his reasons. He stated:

> [68] The Court is satisfied that the Commission has followed the directions in the Davies J Reasons: that is, revised the 2018 Claim to reflect those reasons, including removing the struck claims. The Commission has also largely rolled over the 2020 Draft Claim advanced under the 2020 Enactments, with some further particulars, into its present proposed pleadings.
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> [69] The Court is also satisfied that the present proposed claim, while recast as causes of action created by the 2020 Enactments, carries over the same essential facts and claims as existed in the 2018 Claim before Davies J, seeking to claim the direct and indirect benefits of transfers from Earle Pasquill to the Vicker Defendants.
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> …
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> [90] Again, while the 2020 and 2023 proposed claims recast the facts and claims to fit under the 2020 Enactments, the factual and legal essence of the claims remains the same: that the Vicker Defendants benefited from transfers from Earle Pasquill, used those funds to acquire and maintain properties, and are jointly and severally liable to pay those amounts to the Commission to satisfy the $21.7 Million Judgment. Those claims were expressed in the language of knowing receipt, fraudulent conveyance, and unjust enrichment in the original 2018 Claim, and expressed in the language of the 2020 Enactments in the present amended claim. The facts underlying the claims are essentially identical. Insofar as there are some new facts alleged (for example, the LIF allegations), again, it is not unusual in a fraud or execution

> proceeding to provide further particulars, often expansive particulars, of transfers and assets, as the claimant investigates and untangles the oft-complicated and opaque financial arrangements of a fraudster and his family and related entities.
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> …
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> [92] Here, to paraphrase *Dee Ferraro Limited v. Pellizzari*, 2012 ONCA 55 at para 4, the amendments simply claim additional forms of relief, or clarify the relief sought, based on the same facts as originally pleaded (and as could reasonably be amended or particularised). The Commission does not seek to advance a fundamentally different claim, and no limitation issue is engaged.
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> [Emphasis added.]

[40] While it is not quite right to say that the legal essence of the claim is unchanged, we agree with the chambers judge that the factual landscape is substantially the same.

[41] The amendments sought by the Commission outline the Commission's reliance on Part 18.1 as the legal basis for the claim in paragraphs 54–58. At the heart of the pleading of the new legal basis is the following fair description of s. 164.09:

> 54. Section 164.09 in Part 18.1 of the *Act* provides that if a person against whom an order has been made under s. 161(1)(g) of the *Act* transfers property to a family member or third-party recipient, and the family member of third-party recipient has received an undervalue benefit as the result of the transfer, the Court must order the family member or third-party recipient are jointly and severally liable with the person to pay to the commission an amount equal to the lesser of the undervalue benefit received, or the amount specified in the order made under section 161(1)(g).

[42] Consistently with s. 164.09, the amended pleading:

a) names Mr. Pasquill as a person against whom an order under s. 161(1)(g) has been made;

b) identifies Ms. Pasquill as a family member of Mr. Pasquill as defined in Part 18.1;

c) lists transfers of property from Mr. Pasquill to Ms. Pasquill;

d) asserts that Ms. Pasquill received an undervalue benefit as a result of the transfers;

e) identifies Vicker as a third party recipient of property from Mr. Pasquill; and

f) asserts that Vicker received an undervalue benefit as a result of the transfers made to it.

[43] In substance, all of these factual elements are found in the second amended notice of civil claim:

a) At para. 9, the Commission pleads the order against Mr. Pasquill;

b) At para. 2, the Commission pleads that Mr. Pasquill and Ms. Pasquill are a married couple. The definition of family member in s. 164.01 includes a spouse;

c) At paras. 14 and 16, the Commission pleads transfers of property from Mr. Pasquill to Ms. Pasquill;

d) At para. 25(c), the Commission pleads that the transfers to Ms. Pasquill were made for no or nominal consideration. This would give rise to an undervalue benefit, which is defined in s. 164.01 as the amount by which the fair market value of a property at the time of its transfer exceeds the consideration given for the property in respect of the transfer;

e) At para. 14, the Commission pleads transfers of property to Vicker. Vicker would constitute a third party recipient; and

f) At paras. 3, 14 and 25, the Commission pleads that Ms. Pasquill is the sole director of Vicker, property transfers from Mr. Pasquill to Ms. Pasquill took place directly or indirectly, “including to Vicker”, and the transfers were made for no or nominal consideration. Again, this would give rise to an undervalue benefit to Vicker.

[44] We conclude that the essential factual components of the cause of action now advanced under Part 18.1 were present in the second amended notice of civil claim. For limitation purposes, the claim now advanced is not a new cause of action.

Disposition

[45] The appellant's arguments having failed, the appeal is dismissed.

"The Honourable Mr. Justice Groberman"

"The Honourable Justice Edelmann"

"The Honourable Justice Gomery"