IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cassiar Jade Contracting Inc. v. British Columbia*, 2025 BCSC 1566

Date: 20250813
Docket: S241980
Registry: Vancouver

Between:

Cassiar Jade Contracting Inc. and Glenpark Enterprises Ltd.

Plaintiffs

And

His Majesty the King in Right of the Province of British Columbia and Public Servant #1

Defendants

Before: Associate Judge Robertson

Reasons for Judgment

Counsel for the Plaintiffs:	J.M. Young
Counsel for the Defendant His Majesty the King in Right of the Province of British Columbia:	A. Cochran
No other appearances	
Place and Date of Hearing:	Vancouver, B.C. July 15 and 17, 2025
Place and Date of Judgment:	Vancouver, B.C. August 13, 2025

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[1] The plaintiffs bring this application to amend their notice of civil claim, in which they claim damages arising from jade mining bans promulgated by the Province of British Columbia (the "Province"), which the plaintiffs allege constituted expropriation of their jade mining interests, and, in their handling, misfeasance in public office.

Background

[2] The notice of civil claim was filed March 25, 2024. The following, in summary form, is alleged in the claim as currently filed:

a) Cassiar Jade Contracting Inc. ("Cassier") is the largest producer of jade in BC, and has been operating in BC for 22 years as holder of free miner certificates, mineral claims and leases under the *Mineral Tenure Act,* R.S.B.C. 1996, c. 292 (the "*Act*"), as it has existed from time to time;

b) Glenpark Enterprises Ltd. ("Glenpark") is a small family owned business that has engaged in the exploration and development of placer and hard rock jade deposits for 33 year, also as holder of a free miner certificates, mineral claims and leases under the *Act*;

c) Both of the plaintiff's businesses are focused on the mining of nephrite jade within an area in the northwest corner of BC which falls within lands subject to unproven Aboriginal title claims by the Tahltan Central Government ("TCG"), as administrative body of the Tahltan nation;

d) On June 25, 2018 the TCG issued a press release indicating that it "served notice" on the Province that all jade extracting and placer mining activities within its claimed territory were to be suspended subject to their consent and, thereafter, issued what is termed an "Eviction Notice" to the plaintiffs on July 4, 2019. At the same time, the TCG issued a further public statement to the Province and Minister of Energy and Mines and Petroleum Resources (the "Ministry") demanding that the

Province take immediate steps to have the jade mining activities on their claimed territory cease.

e) Based on advice given by the Province's permitting officer, the plaintiffs continued their mining activities. In the interim, on March 30, 2020, the Province and the TCG, representing the Tahltan Nation, signed a "Shared Prosperity Agreement" which the plaintiffs allege was done without any consultation, or opportunity to consult, with them.

f) On May 11, 2020, an order in council ("OIC") was issued, OIC 234/2020 by which a jade permit deferral order was made imposing a two year moratorium on placer jade mining, with a later placer and hard rock jade permit deferral order being issued by OIC 409/2021 on July 5, 2021, which was then extended by OIC 289/2023 (collectively, the "Bans").

g) The plaintiffs allege that, as a result of the Bans they were prohibited from undertaking their mining activities as they could not acquire the required permits to work on their existing tenures, such that their "rights, titles, and interests" were "expropriated, effectively expropriated, or otherwise taken or converted to the use of the Province" without compensation; and

h) The conduct of the Province constituted misfeasance, including failing to speak or engage with the plaintiffs at all, and late, refusing to engage unless they signed a confidentiality agreement and, with respect to the currently unnamed Public Servant #1, improperly and unlawfully slowing down the processing of permits so that the plaintiffs would be caught by the Bans, specifically the first one, preventing their business activities from being grandfathered out of the Bans, all while the Province continued to require them to pay their annual licensing fees.

[3] In general, the amendments being sought, other than some contextual matters as to the impact of the Bans on the plaintiff's operations (paragraphs 48 to 54, the "Consent Amendments"), relate to events that have occurred since the claim was filed, including the issuance of order in council 242/2024 ("OIC 242/2024") and allegations that following the issuance of OIC 242/2024 the Province allowed another company or companies to continue jade mining in a

manner that was contrary to its terms while prohibiting the plaintiffs from also doing so (the “Additional Misfeasance Amendments”), those allegations being set out at paragraphs 59 to 67 of the proposed amended notice of civil claim.

[4] The defendant opposes the Additional Misfeasance Amendments on the basis that the plaintiffs fail to plead material facts or support the necessary elements of a claim for misfeasance of public office, or any other cause of action. Much of this failing arises from the manner in which the amendments have been drafted. Paragraphs 60 to 66 are largely background factual statements as to discussions between the plaintiffs and members of the Ministry and/or Province, with paragraphs. 59 and 67 under Part 1, and paragraph 10 under Part 3, pleading as follows (with the same formatting as included in the proposed amended claim to identify the amendments, and altered to show further minor changes proposed during submissions, including as to the referenced paragraph numbers):

> 59. Further, after the freeze orders were made, the Province and its servants continued to allow jade mining to continue for certain mining companies, including at least one mining company with repeated shut down orders for non- compliance, despite the three Provincial jade mining ban orders. The Province and its servants knowingly allowed the illegal jade mining to continue under the guise of it being “reclamation” work, despite no prior valid authorization or permit being issued for the jade mining.
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> 67. In undertaking the actions referred to in paragraphs [58] to [66], the Province’s servants and agents including Public Servant #1 knew that such actions were contrary to law, and that they would cause harm to Cassiar and Glenpark.
>
> ~~54. In undertaking the actions referred to in paragraph 53, the Province’s servants and agents including Public Servant #1 knew that such actions were contrary to law, and that they would cause harm to Cassiar and Glenpark.~~
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> **PART 3: LEGAL BASIS**
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> …
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> 10. The Province and its servants agent were under a legal duty to act lawfully, and are liable to the Plaintiffs for misfeasance in public office by knowingly following the wishes of the TCG to stop jade mining by Cassiar and Glenpark by refusing to process Notices of Work pending before the statutory decision makers at the Ministry of Energy, Mines and Petroleum Resources pending the enactment of the subject OICs, knowing that such act was likely to cause injury and harm to Cassiar and Glenpark. The

> Province and its servants and agent further acted unlawfully by allowing certain jade miners to keep jade mining in the face of the freeze order, while denying the ability of the Plaintiffs to do so, and knowing that such act was likely to cause injury and harm to Cassiar and Glenpark.

[5] The primary issue from the defendant's perspective is that there are no specific public servants identified with particulars as to how they acted improperly, and in the manner required to found a claim for misfeasance in public office specific to OIC 242/2024, and the added allegations. While the defendant acknowledges that the alleged actors can be identified as an anonymous party (as is currently the case with Public Servant #1") they argue that simply lumping all the allegations together against the defendant in an omnibus way or by using the general description of "the Province or its agent" in the form that exists in the proposed pleading is not sufficient.

[6] A five-week trial is scheduled to commence June 8, 2026. However, as of the date of this application, no examinations for discovery have been conducted, and no lists of documents exchanged.

Legal Framework

[7] Because a notice of trial has been filed, leave to amend is required pursuant to R. 6-1(1) of the *Supreme Court Civil Rules* (the "Rules").

[8] The parties do not dispute the principles that apply in considering such an amendment, although they referenced different authority in that respect. The leading decision setting out those principles is *Victoria Grey Metro Trust Co. v. Fort Gary Trust Co,* 1982 CanLII 227 (BCSC), at para. 2:

> (a) such amendments should be permitted as are necessary to determine the real question in issue between the parties;
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> (b) the *Rules* will be interpreted to permit the just and speedy determination of the dispute on its merits;
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> (c) the *Law and Equity Act,* R.S.B.C. 1996, c. 253, s. 10 "requires the court to grant all such remedies as any of the parties may appear to be entitled to 'so that, as far as possible, all matters in controversy between the parties may be completely and finally determined …'";

(d) the court will take a generous approach to the question of amendments;

(e) the court will not allow useless amendments;

(f) the court will not give its sanction to amendments which violate the *Rules* which govern pleadings, including the requirements relating to conciseness, material fact, particulars and the prohibition against pleadings which disclose no reasonable claim or are otherwise scandalous, frivolous or vexatious.

[9] Those factors were confirmed by our court of appeal in *Berthin v. Berthin,* 2019 BCCA 157 at para. 3, and in *Colter Developments Ltd. v. Squamish JV Ltd.* 2015 BCSC 415, at para. 21 ("*Colter Developments*").

[10] The plaintiffs emphasize the importance of factors (a) through (d), noting that the overriding consideration, as noted by Justice Groberman in *Chouinard v. O'Connor,* 2011 BCCA 161 at para. 10 is what is just and convenient, with the discretion to be exercised judicially, and with amendments being granted to permit as necessary the real questions and issues between the parties to be determined assuming the facts as alleged are taken as established without the need to adduce evidence in support of the proposed amendments.

[11] Further, proposed amendments are to be considered in the context of the entirety of the proposed amended pleading, which are to be read generously and as a whole, rather than by a limited reading of the individual amendments themselves, with a recognition that some particulars that may ultimately be required need not be plead if they are within the knowledge of the defendants: *Lee v. G.Y. Lee & Associates Ltd.,* 2014 BCCA 400, at para 14.

[12] In this case, the plaintiffs argue that while the individual factual amendments are being opposed, when read in the context of the full legal basis, they have been sufficiently particularized. As to the individual identity of the public servant they argue that the identify of the servants who issued approvals to other companies etc. is something only within the knowledge of the defendant, such that requiring a placeholder defined term of "Public Servant #2" is, essentially, putting form over substance given that when, read as a whole, it is clear what is being alleged and what case the defendant is being put to, and what issues are relevant for the purposes of disclosure obligations.

[13] The defendant emphasizes the importance of the factors in (d) to (f), noting that the requirement for leave to be obtained inherently means that court must exercise its gatekeeping function to ensure that any amendment satisfies the requirements for pleadings generally and, if the essential elements of a cause of action are not included or a reasonable cause of action established it will be deficient and the amendment should be denied: *Colter Developments,* at para. 3.

[14] Specifically:

a) The notice of civil claim must set out a concise statement of the material facts giving rise to the claim, set out the relief sought by the plaintiff against each named defendant and set out a concise summary of the legal basis for the relief sought: R. 3-1(2);

b) Bald assertions or conclusory statements of law do not constitute material facts that can ground a claim, nor do statements based on speculation or assumptions. Rather, the plaintiff must plead, with sufficient detail, the constituent elements of each cause of action or legal ground raised, enabling the defendant to know who, when, where, how and what gave rise to its liability: *Owimar v. Steward*, 2019 BCSC 1198 as confirmed in *Kindylides v. Does*, 2020 BCCA 330, at para. 34; and

c) Allegations that are “directed at all defendants” may be viewed as “wild speculation” if such detail is not provided for each defendant: *Young v. Borzoni,* 2007 BCCA 16, at para. 32.

[15] The defendant argues that these pleadings fail to meet that test given the requirements to establish a claim for public misfeasance which is said to be “among the most egregious of tortious misconduct”, such that its ambit has always been narrow. A cautious approach is in fact taken in finding liability against the public officer, with even a finding of gross negligence not necessarily being sufficient to make out the tort: *British Columbia v. Greengen Holdings Ltd.,* 2025 BCCA 115, at paras. 49 to 50, concluding:

> [51] Government representatives who perform a particular service, or render a discretionary decision, will rarely be confined to considering a plaintiff’s interests alone. Instead, they will often be required to simultaneously account for and balance public policy considerations, such

> as "economic, social and political factors": *Rain Coast* at para. 154; *Nelson* at para. 1. Because of this balancing and the myriad and sometimes countervailing factors that may be engaged, the law recognizes that government representatives are entitled to make decisions in good faith that they know to be "… adverse to interests of certain members of the public": *Odhavji* at para. 28. The fact they do so does not render their decision inherently suspect or problematic.

[16] There is, however, a distinction between establishing liability at trial and pleading a cause of action before discoveries are complete. Given that pleadings are not to include evidence, a consideration as to whether a pleading is sufficient will inherently be broader than a consideration of whether liability has been proven.

[17] As stated in *Odhavji Estate v. Woodhouse*, 2003 SCC 69 at para. 23, the required elements of the cause of action are that:

a) A public officer engaged in deliberate and unlawful conduct in his or her capacity as a public officer;

b) The public officer was aware both that his or her conduct was unlawful and that it was likely to harm the plaintiff; and

c) The public official's action caused legally recoverable damages.

[18] The court then summarized the issue as follows:

> 24 Insofar as the nature of the misconduct is concerned, the essential question to be determined is not whether the officer has unlawfully exercised a power actually possessed, but whether the alleged misconduct is deliberate and unlawful.…

[19] The defendant argues that, as an intentional tort, the mental elements of the first two factors must be satisfied in one of two ways, either that there was a 'targeted malice" for the specific purpose of injuring the plaintiff, or that the public officer knowingly engaged in the unlawful act with the knowledge, subjective recklessness, or willful blindness that the unlawful act was likely to harm the plaintiff. Mere foreseeability of harm is not sufficient: *Rain Coast Water Corp. v. British Columbia,* 2019 BCCA 201 at paras. 150 and 153-155.

[20] However, as noted in *Timberwolf Log Trading Ltd. v. British Columbia (Forests, Lands and Natural Resource Operations),* 2012 BCSC 690:

> [45] I reiterate the statement of the Court in *Odhavji* that the tort does not require that the defendant be engaged in a particular type of unlawful conduct. It is sufficient that the unlawful conduct is alleged to be deliberate and likely to harm the plaintiff. I have reiterated this statement from *Odhavji* in response to the defendants' submission in the course of the present application that the alleged unlawful conduct must be of a particular kind relating to the public duties of the officer, rather than simply unlawful conduct generally.
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> [46] As I read *Odhavji*, the defendants' submission is not a correct statement of the law. The conduct of Smallacombe as alleged in the plaintiff's pleadings is, in fact, precisely the kind of conduct the tort of misfeasance in public office is designed to enjoin: His conduct as alleged involved the exercise of powers which in law he did not possess at all.
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> [47] The Court in *Odhavji* (at para. 19) citing the landmark decision of *Roncarelli v. Duplessis*, 1959 CanLII 50 (SCC), [1959] S.C.R. 121, emphasized that misfeasance is not limited to circumstances in which a public officer has abused a power actually possessed by virtue of occupying that public office. The Court in *Roncarelli* held that Mr. Duplessis had committed misfeasance because he purported to exercise a statutory power which he did not, in fact, have. Thus, said the Court in *Odhavji*: "... it is clear that the tort is not restricted to the abuse of a statutory or prerogative power actually held."
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> [48] The Court went on to say (quoting *Northern Territory of Australia v. Mengel* (1995), 129 A.L.R.I. (H.C.)) that:
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>> Any act or omission done or made by a public official in the purported performance of the functions of the office can found an action for misfeasance in public office.
>> [Emphasis added by S.C.C.]

[21] The defendant says that the proposed amended notice of civil claim fails to identify the specific party, anonymously or by name, that acted in a way sufficient to meet the mental element of the tort, relying on *Carhoun & Sons Enterprises Ltd. v. Canada (Attorney General),* 2015 BCCA 163, at para. 131 were, on an application to strike a notice of civil claim, the court found that the failure to identify a specific public officer or allege that an officer "specifically intended to injure a person or class of persons" was found to be a basis on which they claim for public misfeasance was subject to being struck, subject to the fact that it was capable of being amended, with leave to amend being granted.

Analysis

[22] Given that leave to amend is required only once a notice of trial has been filed (assuming no prior amendment has been done), such applications are often brought once some discovery has taken place that may or may not have yielded the information that gives rise to the proposed amendments.

[23] Here, that is not the case. The amendments raise factual issues determined from publicly known information, that being the issuance of OIC 242/2024, and general knowledge in the form of an allegation that other parties have been able to continue mining jade generally notwithstanding OIC 242/2024, but not necessarily which employee or officer made the decisions in respect of enforcing the ban and determining which company or companies, if any, were not bound by them.

[24] When the facts are read in totality with the legal basis as set out under Part 4, the required elements of a cause of action for misfeasance in public office are pled in the proposed notice of civil claim, albeit with the individual parties involved currently being unknown. Specifically, the amendments plead that in managing the Bans, including those arising from OIC 242/2024, which are alleged to be deliberate and to likely harm the plaintiffs.

[25] While I do share much of the defendant's concerns as to the general nature of the claims as framed, and suspect that a further amendment may be needed once discoveries are completed, I agree with the plaintiffs that requiring a defined term to be added, namely "Public Servant #2" at this stage of the proceedings, is putting form over substance. To require that would require this court to take a narrow rather than a generous approach to this amendment application which is not the focus of applications, particularly at this stage, or the purpose of the *Rules* to provide for the efficient resolution of all matters in issue between the parties.

[26] In addition, it is of note that the specific identity of the individual employee or officer within the Ministry who may have acted contrary to their duties through the alleged management of the Bans, assuming that such a person exists, would only be known by the defendant at this stage.

[27] While the court must act as a gatekeeper, and not allow claims that are doomed to fail to proceed or to be added through an amendment, I am satisfied

that the proposed amended notice of civil claim is sufficient to found the necessary elements of the cause of action when read with the whole of the pleading,

[28] This of course, does not mean that the pleading would survive a subsequent strike application once discoveries are completed if no such person is or can be identified through the discovery process, or the pleadings not further amended to reflect such further disclosure and particulars. I make no finding in that respect.

[29] However, at this stage, the proposed amendments sufficiently set out the elements of the cause of action so as to enable the defendant to know the case that must be met, and to put in issue the identity of those individuals who acted in that regard so as to enable discoveries to canvas such further particulars as may be pled at a later date.

Conclusion and Order Made

[30] Given the above, I grant the order as sought in paragraph 1 of the notice of application filed April 4, 2025.

[31] Given the nature of these claims, costs of this application are to the plaintiffs in the cause.

"Associate Judge Robertson"