

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bonner v. Whitelaw Twining LLP*,
2026 BCSC 20

Date: 20260106
Docket: S258512
Registry: Vancouver

Between:

John Todd Bonner; Nithinan Boonyawattapisut

Plaintiffs

And

**Whitelaw Twining LLP; Patrick Sullivan; Sara Shuchat; Sam MacDonald; and
John Doe and Jane Doe (1-10)**

Defendants

Before: The Honourable Justice A. Ross

Reasons for Judgment

The Plaintiffs, appearing in person:

J. Bonner
N. Boonyawattapisut

Counsel for the Defendants Whitelaw
Twining LLP, Patrick Sullivan, Sara
Shuchat, and Sam MacDonald:

J.K. Lockhart

Place and Date of Trial/Hearing:

Vancouver, B.C.
December 17, 2025

Place and Date of Judgment:

Vancouver, B.C.
January 6, 2026

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Introduction

[1] This is an application by the defendants to dismiss, or in the alternative to stay, an action commenced by the plaintiffs.

[2] There is significant litigation history relating to this long-running corporate dispute. However, put simply, the plaintiffs in this action (the “Bonner Plaintiffs”) have sued the lawyers who represent the opposing party (the “Defendant Lawyers”).

[3] The Bonner Plaintiffs allege that the Defendant Lawyers have, either deliberately or negligently, suppressed relevant documents that go to the heart of the corporate dispute. The Bonner Plaintiffs identify four intentional causes of action against the Defendant Lawyers.

[4] The Defendant Lawyers apply under Rule 9-5(1) to dismiss the notice of civil claim on the basis that it discloses no cause of action. The primary focuses of the defence submission are;

- a) for any claim in negligence, counsel for one party in the litigation owes no duty of care to the opposite party;
- b) for any intentional tort, the claim is bound to fail because the lawyers fall within an immunity from private law claims.

[5] For the reasons set out below, I accept the submissions of the defence and I dismiss the plaintiff’s action as disclosing no cause of action.

[6] My discussion below addresses the issues raised under Rule 9-5(1). Under that subrule, no evidence is admissible. In these reasons I assume that all of the material facts alleged in the amended notice of civil claim are true. The Bonner Plaintiffs make allegations against counsel. For the purpose of these reasons, I assume those allegations to be true. I make no findings of fact, nor any comment on the allegations. For context, however, I address the litigation history.

Issues

[7] The main issue for me to decide is: Are the Defendant Lawyers protected by an immunity that exists for public policy reasons?

Preliminary Matters

[8] At the outset of the hearing, the plaintiffs took the position that the defence application was moot because defence notice of application (filed December 8, 2025) addressed the Bonner Plaintiffs' original notice of civil claim (the "NOCC"). However, on December 16, 2025, the Bonner Plaintiffs filed an amended notice of civil claim ("ANOCC"). Hence, the Bonner Plaintiffs submitted, the application was moot.

[9] However, upon receiving the ANOCC, the Defendant Lawyers pivoted. At the opening of the hearing, they sought short leave to file a new notice of application that addressed the ANOCC. The Defendant Lawyers sought to argue the merits of the application. Mr. Bonner, on behalf of the Bonner Plaintiffs did not object proceeding in that manner and obtaining a decision on the merits. On that basis I granted short leave to hear the Defendant Lawyers new application.

The Notice of Application

[10] The defendants seek the following orders:

- a) An order that the ANOCC filed in this proceeding on 16 December 2025 (the "Claim") be struck out and dismissed;
- b) In the alternative, an order that this action be stayed in respect to all steps unrelated to this application or, in the alternative, that the time for the defendants to file a response to civil claim be extended, until 21 days after judgment has been granted in respect to this application as it concerns paragraph 1 above;
- c) An order dispensing with the plaintiff's signature on the order;

- d) An order that the plaintiff pay lump sum costs of this application in the amount of \$2,000 to the defendants.

[11] At the close of the hearing:

- a) I reserved on (a) the main issue, and (d) costs;
- b) On (b) I granted and interim stay of this action until 21 days after the release of these reasons;
- c) I also indicated that the plaintiffs signatures would not be required on the eventual order (because they do not reside in B.C.).

[12] I also note that the Defendant Lawyers raised, but did not rely on, the prolix nature of the ANOCC. The original NOCC was 47 pages long. The ANOCC is 75 pages long including all of the redactions. No part of my decision is based on the prolix nature of the ANOCC.

Factual Background

[13] For efficiency, I take most of the factual background from the notice of application of the defendants. These facts are not in dispute. I recite them here for context and not as the basis of my decision. These are not findings of fact.

[14] Axion Ventures Inc. (“Axion”) is, or was, a publicly traded company.

[15] Mr. Bonner was the CEO and a director of Axion until July 2020. The other plaintiff is Ms. Nithinan Boonyawattapisut, who is Mr. Bonner’s wife. (In the pleadings and submissions of both sides she is referred to by the name “Jess” and I will do the same in these reasons.) Either directly or indirectly, Jess is, or was, a major shareholder in Axion.

[16] Mr. Bonner was fired by the board of directors of Axion on July 14, 2020. That event commenced a proxy battle for control of Axion. Since that date, there have been a series of actions and petitions between Axion and the Bonner Plaintiffs.

[17] Since July 2020, the Defendant Lawyers have acted as counsel for Axion and related parties. The Bonner Plaintiffs are self represented although they have had counsel at various times.

[18] When he was fired on July 14, 2020, Mr. Bonner was immediately locked out of his access to Axion’s email and other records. Thereafter, Axion had control and access to Axion’s Google “G-Suite” (emails and documents). The Bonner Plaintiffs have not had access to the G-Suite.

[19] The vast majority of the litigation has proceeded on the basis of the documents disclosed by Axion as the evidentiary record. At some point, Axion employees took steps to preserve certain parts of the G-Suite. Ultimately, all access to the G-Suite was terminated by Axion’s request.

[20] The litigation has been hard fought. There have been twenty written decisions across at least three proceedings:

- a) an oppression claim by the Bonner Plaintiffs (the “Oppression Claim”),
- b) a conspiracy claim by Axion against the Bonner Plaintiffs alleging the plaintiff stripped Axion of valuable assets (the “Axion Claim”), and
- c) a debt claim brought by the Bonner Plaintiffs and others against Axion and related parties (the “NextPlay Debt Claim”).

[21] The Oppression Claim was dismissed by me in October 2021 (*Bonner v Axion Ventures Inc*, 2021 BCSC 1899).

[22] Since 2022, the Axion Claim and the NextPlay Debt Claim have been case managed by Justice Paul Walker. During the course of the Axion Claim, the ownership of certain business assets and intellectual property was disputed. Those assets were tied up by injunctions. In some cases, the licenses for those assets have since been lost.

[23] In the:

- a) Axion Claim, Axion has asserted ownership of the disputed business assets. The Bonner Plaintiffs also assert ownership.
- b) NextPlay Debt Claim, Axion has denied the legitimacy of the Bonner Plaintiffs' debt claims.

[24] Again, all of the steps in the litigation have transpired based primarily upon the document disclosure by Axion.

[25] A trial is underway. That trial began on February 10, 2025, and has proceeded through 62 trial days so far. Justice Walker has scheduled a sequencing application for early January 2026. For the reasons discussed below, it is unclear how much more trial time will be required.

[26] One of the proposed witnesses at trial is a lawyer named Mr. Rollins. Mr. Rollins is the former in-house counsel for Axion. As discussed below, Mr. Rollins has a laptop computer which contains saved copies of Axion documents and emails. Many of these documents have not yet been available in the trial.

The Bonner Plaintiffs' Allegations

[27] Boiled down to its essential elements, the ANOCC alleges:

- a) In the face of Axion having destroyed access to the G-Suite of documents, from September 2020 through January 2025 the Defendant Lawyers did not seek or request documents from Axion's former general counsel, Mr. Rollins (or from other potential document holders).
- b) In February 2025, (just before the start of the trial) the Defendant Lawyers obtained the laptop computer owned by Mr. Rollins.
- c) The Defendant Lawyers listed and produced 314 documents, consisting primarily of emails retrieved from the laptop. However, the Defendant Lawyers did not reveal to the Bonner Plaintiffs the existence of the laptop from which these documents were obtained.

- d) When the Defendant Lawyers produced the produced 314 documents, they failed to disclose expressly that they had reviewed and produced those records.
- e) In June 2025, during the fourth month of trial, the Defendant Lawyers disclosed that they were in possession of Mr. Rollins' laptop. They also indicated that they had not searched the laptop for other information.
- f) Also in June 2025 the Defendant Lawyers disclosed that the laptop contained over 19,000 emails.
- g) The 19,000 emails were ultimately disclosed in September 2025.
- h) Included in the 19,000 emails are documents that support the Bonner Plaintiffs' positions in both the Axion Claim (ownership of the disputed intellectual property) and the NextPlay Debt Claim (regarding the existence of the debt).

[28] Again, these are the allegations in the ANOCC filed by the Bonner Plaintiffs against the Defendant Lawyers. The trial of the underlying litigation is ongoing. The ownership of the disputed intellectual property in the validity of the debt are the core issues in that trial before Justice Walker. Those issues have not been decided.

Steps Leading to this Application

[29] On December 4, 2025, the Bonner Plaintiffs filed, in the Axion Claim, an application to disqualify the Defendant Lawyers acting as counsel for Axion. The disqualification application relies, in part, on the existence of this action as a basis for the disqualification.

[30] This action was commenced on December 8, 2025. As noted, the ANOCC was filed December 16, 2025.

The Plaintiffs' Position

[31] The Bonner Plaintiffs' position can be summarized as follows:

- a) The Defendant Lawyers suppressed and failed to produce various documents.
- b) The suppressed documents include documents in the possession or control of various third parties to the Axion Claim, including former directors, former employees, auditors and former corporate counsel.
- c) There has been a conflict in the evidence at trial, and in earlier affidavit evidence, concerning the legitimacy of various corporate documents including resolutions relating to NextPlay loans to Axion.
- d) The Defendant Lawyers advanced Axion's position through the underlying litigation contrary to the position presented by the Bonner Plaintiffs.
- e) The documents contained in Mr. Rollins' laptop will establish the Bonner Plaintiffs' positions in the underlying litigation.
- f) The Bonner Plaintiffs have suffered financial losses as a result of the positions taken Axion (via the Defendant Lawyers) in the underlying litigation. Those financial losses include lost of assets that were tied up by injunctions.

[32] Based upon those allegations, the Bonner Plaintiffs plead intentional torts against the Defendant Lawyers:

- a) intentional interference with economic relations;
- b) fraudulent misrepresentation;
- c) civil conspiracy by unlawful means (that being, spoliation of evidence);
and
- d) abuse of process.

[33] I note that, in the alternative, the ANOCC pleads claims in negligence. However, in submissions, the Bonner Plaintiffs acknowledged that any claim in

negligence against the Defendant Lawyers would fail because the Defendant Lawyers owed no duty of care to the Bonner Plaintiffs. Hence, I do not need to address the negligence claims in these reasons. They disclose not cause of action.

[34] The Bonner Plaintiffs submit that they have pled intentional torts. Further, they have properly pled the essential elements of all of those torts.

[35] Apart from its prolix nature, the defence does not argue that the causes of action or improperly pled. Hence, I do not find that the pleading is deficient.

[36] Instead, the focus of the defence argument relates to immunities provided to opposing counsel. I address the defence arguments below.

[37] For context, I will set out here the Bonner Plaintiffs' position on the defence argument relating to immunity for opposing counsel. The Bonner Plaintiffs argue that the immunity only applies to statements made in the course of advocacy. It is not intended to cover intentional litigation conduct. The Bonner Plaintiffs' allegations in the ANOCC allege intentional conduct (i.e. acts, not statements) that go beyond the protections provided in the caselaw.

[38] Further, the Bonner Plaintiffs note that they are not suing for the cost of defending the Axion Claim, nor for the cost of prosecuting the NextPlay Debt Claim that are currently before Justice Walker. Instead, they submit that, as a result of prior interim rulings in those the actions, the Bonner Plaintiffs have suffered economic loss. In that respect, certain disputed assets and intellectual property were tied up by injunctions and ultimately lost. The Bonner Plaintiffs say that the undisclosed documents clearly indicate that Axion had no ownership interest in those assets.

[39] The Bonner Plaintiffs further argue that Rule 9-5 provides a very high bar for the dismissal of a claim. It must be plain and obvious that the claim will not succeed. They submit that the immunity is not absolute. There are "lanes" whereby the plaintiffs could be successful on this action. Hence, the application should be dismissed.

The Defendants' Position

[40] The Defendant Lawyers apply under Rule 9-5(1)(a) and to some small extent on Rule 9-5(1)(d). I deal with rule 9-5(1)(d) at the end of these reasons

[41] Rule 9-5(1)(a) provides:

Scandalous, frivolous or vexatious matters

(1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

(a) it discloses no reasonable claim or defence, as the case may be,

[42] On this application, the defence challenges the ANOCC. The Defendant Lawyers submit that a pleading must be struck if it is plain and obvious that it discloses no reasonable cause of action. In other words, a claim should be struck if it has no reasonable prospect of success. Counsel for the Defendant Lawyers accepts that, in determining whether the claim has no reasonable prospect of success:

- a) I am to assume the facts pleaded in the ANOCC are true unless they are manifestly incapable of proof or based on assumptions and speculation.
- b) I am entitled to skeptically analyze pleadings and must not consider what evidence adduced in future might or might not show.

[43] As noted above, I will not address here the Bonner Plaintiffs' alternative allegations framed in negligence. There is no duty of care owed by the Defendant Lawyers to the Bonner Plaintiffs.

[44] The main thrust of the defence application is as follows: For public policy reasons, the courts have long determined that no action lies against the lawyer for the opposing party. An absolute privilege applies to defence counsel for all things said or done, either in or out of court, in the defence of the lawyers' clients.

[45] Focusing on the facts of this case, the Defendant Lawyers note that the ANOCC alleges that the Defendant Lawyers put forward a case against the Bonner Plaintiffs when those lawyers were either in possession of, or had the means of

obtaining, documents that (allegedly) disprove the underpinning of Axion’s case. Seen in its most assertive light, the ANOCC alleges deliberately untruthful conduct on the part of the Defendant Lawyers.

[46] Counsel for the Defendant Lawyers submits that no private law claim exists against opposing counsel for the failure to disclose documents in a different proceeding. Counsel goes further, and submits that even if the allegation was that opposing counsel had falsified documents in the other proceeding (which is not the claim here), it would not form the grounds of a cause of action.

[47] In support of these propositions the Defendant Lawyers rely on a number of cases. I have taken the unusual step of setting out long passages from several decisions to provide the historical perspective.

[48] As a starting point, counsel submits that *Duncan v. Lessing*, 2018 BCCA 9, discusses the principles to be applied. In that case, the plaintiff sued his wife’s lawyer alleging breach of privacy. In the course of bringing a pre-trial application, the wife’s lawyer had caused the plaintiff’s private information to be disclosed to companies that were not party to the litigation. The action against the lawyer was dismissed in this court on the basis of an absolute privilege that protects lawyers involved in litigation. The plaintiff appealed that dismissal. The Court of Appeal stated:

[67] This Court has held that absolute immunity for witnesses applies to all causes of action arising from communications made by them (*Hung v. Gardiner*, 2003 BCCA 257 at para. 34), but I would prefer to leave for another day the question of the extent to which the immunity applies to counsel for claims other than in defamation.

[68] I agree that the immunity developed in the law of defamation can in principle apply to other causes of action when the public interest considerations that underlie the privilege apply to those actions. However, it cannot be the case that it applies to shelter counsel from *all* causes of action arising out of the conduct of judicial proceedings.

[69] The most obvious example of a cause of action that can be brought against counsel for their conduct in judicial proceedings is an action by a client against a lawyer for professional negligence. The relationship between professional negligence actions and the absolute privilege is succinctly

summarized in *Remedies in Tort*, ed. by Linda D. Rainaldi, loose-leaf, (Toronto, Ont.: Thomson Reuters Canada Ltd., 2016), ch. 16.III at 61-62:

§46 Canadian courts have consistently held that the public interest in the administration of justice does not require that lawyers be immune from action at the suit of a client for negligence in the conduct of the client's civil or criminal case in court. ... immunity from liability for negligence in court does not follow from the existence of an absolute privilege with respect to anything said in court.

[70] Malicious prosecution is another cause of action that can be brought against counsel in relation to their conduct of litigation: *Nelles v. Ontario*, 1989 CanLII 77 (SCC), [1989] 2 S.C.R. 170.

[71] The challenge of reconciling the absolute privilege doctrine with non-defamation claims was addressed by the Ontario Court of Appeal in *Amato v. Welsh*, 2013 ONCA 258. In that case, absolute privilege was set up by litigation counsel as a defence to a claim by the lawyers' client for alleged breach of fiduciary duty and the duty of loyalty based on statements made or omitted by the lawyers while representing different clients in a quasi-judicial proceeding. The lawyers accepted that the absolute immunity did not bar claims in professional negligence, but argued that a claim could not be based on statements made or omitted to be made during the hearing.

[72] The Court of Appeal refused to strike the claims. Cronk J.A. pointed out that "the boundaries of the absolute privilege doctrine are not firmly set" and that "its scope and application continue to evolve" (at para. 68).

[73] I agree with Cronk J.A. that the scope and application of the absolute privilege doctrine are not settled. The doctrine clearly applies to claims in defamation brought against counsel for anything said during the course of judicial proceedings, inside or outside court, in order to protect the integrity of the justice system. The doctrine applies to statements by all participants in the litigation process, but is particularly important in its application to litigation counsel because of the need to ensure that counsel are not impeded from the vital role of zealously advocating on behalf of their clients without fear of liability for doing so.

[74] It seems equally clear that the doctrine does not apply to claims of professional negligence for counsel's conduct of litigation, and may not apply to other claims of clients based on their lawyer's conduct in court. Whether it applies to other causes of action (what was referred to as "disputed ground" in *Taylor* at 215), will depend on whether the public interest in protecting the integrity of the judicial process will be impaired by permitting such claims to proceed.

[49] Hence, an immunity exists, but it is not absolute. There are exceptions, including solicitor's negligence (involving the client) and malicious prosecution.

[50] In *Hung v. Gardiner*, 2003 BCCA 257, the Court of Appeal dealt with a slightly different situation but addressed the wider implications of the absolute privilege. In that case, the defendant reported the plaintiff (a lawyer) to the Law Society.

[33] Thus, the trial judge was correct in finding that the respondents sent the report to the Law Society and the CGA Association on an occasion of absolute privilege.

[34] The trial judge was also correct in concluding that the absolute privilege applies to all causes of action arising from that act. That is clear from the reasons for judgment of Seller L.J., concurred in by Willmer and Diplock LL.J., in *Marrinan v. Vibart*, [1962] 3 All E.R. 380 (C.A.) where, after citing the Court's decision in *Lincoln*, he said (at p. 383):

Whatever form of action is sought to be derived from what was said or done in the course of judicial proceedings must suffer the same fate of being barred by the rule which protects witnesses in their evidence before the court and in the preparation of the evidence which is to be so given. LORD ESHER M.R. has been well cited too; in *Royal Aquarium and Summer and Winter Garden Society v. Parkinson* [[1892] 1 Q.B. 431] he says [at p. 442]:

“It is true that, in respect of statements made in the course of proceedings before a court of justice, whether by judge or counsel, or witnesses, there is an absolute immunity from liability to an action. The ground of that rule is public policy. It is applicable to all kinds of courts of justice...”

[35] Seller L.J. quoted further from *Royal Aquarium*, as follows:

“...But it does not matter whether the action is framed as an action for defamation or as an action analogous to an action for malicious prosecution or for deceit or, as in this instance, for combining or conspiring together for the purpose of injuring another: the rules of law is that no action lies against witnesses in respect of evidence prepared (*Watson v. McEwan*, *Watson v. Jones* [[1905] A.C. 480], given, adduced or procured by them in the course of legal proceedings. The law protects witnesses and others, not for their benefit, but for a higher interest, namely, the advancement of public justice.”

[36] Diplock L.J. put the principle succinctly (at p. 385):

Counsel for the plaintiff has sought to persuade this court that that rule of public policy, for reasons which it is impossible to explain, applies only to actions for defamation and that, if one is sufficiently ingenious to discover some other way of bringing an action against a witness for evidence which he has given in a court, then public policy does not apply to that, although all of the evils of the action are precisely the same as it if were a direct action for defamation. It seems to me quite plain on the authorities – and on the English authorities as well as the Australian authority directly on point – that that argument is without foundation.

[37] The appellant’s action against the respondents cannot be maintained. All of the respondents are entitled to claim absolute privilege and are immune from liability for their actions in sending information to the Law Society and the CGA Association concerning the appellant’s professional conduct.

[Emphasis added.]

[51] The defendants submit that the absolute privilege applies for a number of reasons included in those are:

- a) Lawyers must be free to avidly represent their own clients and they cannot be limited by the fear of personal tort liability.
- b) If the immunity did not exist, litigation would never come to an end.

[52] The defence further submits that, to the extent the allegations relate to either a failure to disclose or a hiding of evidence, the governing cases are similarly clear. In *Awad v. Salna*, 2017 BCSC 429, the plaintiff sued opposing counsel, Mr. Gold and Mr. Maltz. Justice Greyell wrote:

[15] Dr. Awad’s claims against Mr. Gold and Mr. Maltz, the attorneys who represented Mr. Salna and Dover in the various court cases brought in British Columbia, Alberta and Ontario, are rather obliquely set out in the notice of civil claim. Generally, Dr. Awad alleges the defendants’ counsel have been involved in a conspiracy with their client to provide fraudulent accounts to the court by making false statements to the court, by not producing relevant documents and by generally breaching their fiduciary duty to the court.

...

[21] Mr. Gold and/or Mr. Maltz have represented Dover and Mr. Salna in litigation before the Superior Court of Justice, commercial division in Ontario, in proceedings in this Court before Madam Justice Loo in 2009 and in proceedings before the Alberta Courts. At no time did either defendant give advice to or represent the plaintiffs. These defendants did not owe a legal duty of care to the plaintiffs.

[22] There is an absolute privilege extended to counsel for all communications made in the course of or incidental to their representation of clients in the judicial or quasi-judicial proceedings. In *Lawrence et al v. Sandilands et al*, 2003 BCSC 211, Madam Justice Wedge stated at paras. 77–80:

[77] It is well established that in the course of counsel’s representation of his or her clients interests, it is to be expected that “...much may be done that is intentionally and necessarily directed toward injuring the opposing party’s interests.” (***Crooks v. Manolescu***, [1995] B.C.J. No. 17 (BCSC) at paragraph 10).

[78] In *Kamahap Enterprises Ltd. V. Chu's Central Market Ltd.* (1989), 1989 CanLII 242 (BC CA), 40 B.C.L.R. (2d) 288 (C.A.), the Court of Appeal said at page 291 and 292:

The cause of action asserted, were it to be upheld, would be one imposing on the solicitors for one party an obligation of care to all others involved in the transaction to see the transaction properly carried into effect, even though the solicitors were retained and paid only by one of them.

...where the only damage foreseeable is damage to another's pocket or estate—where there is no foreseeable risk of personal injury or physical property damage—foreseeability of such economic loss, while essential to the existence of a duty of care, cannot, it now seems clear, generally be regarded as sufficient to create proximity and thus impose such a duty.

[79] While a solicitor may owe an ethical duty to the court to be candid and fair, the only party to whom a solicitor owes an actionable duty is his or her client (*Jensen v. MacGregor* (1992), 1992 CanLII 2167 (BC SC), 65 B.C.L.R. (2d) 224 at p. 228 (BCSC)).

[80] The court in *Jensen* found that in the absence of a contractual obligation and any duty of care owed between counsel for one party and the party adverse in interest, there was no recognizable cause of action, no plausible argument and no triable issue raised on the pleadings.

[53] The court in *Awad* cited *Pearlman v. Critchley*, 2012 BCSC 1830. In that case, Justice Crawford stated:

[44] I start with the settled law that Mr. Critchley, acting for an opposing party, owed no duty to Mr. Pearlman. No tort action could lie against him. As well, all communications made by a lawyer in the course of, or incidental to, judicial proceedings are protected by actual privilege: *Lawrence v. Sandilands*, 2003 BCSC 211.

...

[48] I find Mr. Pearlman's claims in this regard are bound to fail in law, and furthermore are frivolous and vexatious.

...

[65] This allegation of fraud for failure to disclose an alleged document fails because of the absolute privilege enjoyed by counsel. I find no basis for the pleading and also find the claim is frivolous and vexatious.

[54] It is important to note that in *Pearlman*, Crawford J. dismissed the case for more than one reason. He found the claim frivolous and vexatious. It was Mr. Pearlman's second action against Mr. Critchley. However, the Defendant

Lawyers rely on the finding that the claim would fail due to the absolute privilege enjoyed by counsel.

[55] In *Wang v. Lee*, 2021 BCSC 2028, Justice Crerar wrote the following on this issue:

[45] I will pause. Again, this is addressed to Mr Wang for his benefit. Mr Wang will appreciate that he is not unique in suing or trying to sue a lawyer that formerly represented or represents the opposite side. It is not an unusual phenomenon.

[46] The essence distilled from these authorities is that a claim against an adverse party's lawyer based in communications or acts carried out by that lawyer in the course of fulfilling his or her duties as a zealous advocate to their client will be protected, will disclose no reasonable cause of action, and will be struck as disclosing no reasonable cause of action under the claim.

[Emphasis added.]

[56] The statements from *Wang* were picked up by Justice Hughes in *Portnov v. Alexander Holburn + Lang LLP*, 2025 BCSC 388:

[38] As noted in *Wang*, a claim against an adverse party's lawyer based in communications or acts carried out by that lawyer in the course of fulfilling their duties as a zealous advocate for their client are protected, do not disclose a reasonable cause of action, and will be struck out as failing to disclose a cause of action: at para. 46.

[Emphasis added.]

[57] In *Singh v. Nielsen*, 2016 BCSC 2420 at para. 20, Justice Verhoeven wrote:

[20] In particular, allegations that counsel for the opposing party has misled or intentionally deceived the court resulting in decisions or rulings unfavourable to the claimant do not found actionable breaches of any private duty owed to the claimant: *Gateway Building Management Limited v. Manjit Singh Randhawa*, 2013 BCSC 350, at paras. 23 - 26. If it were otherwise, there would be no end to such litigation.

[58] In *Martel v. Andrew*, 2005 ABCA 63, the Court wrote:

[11] The Appellant bases her argument that the Respondents acted in bad faith on the fact that Mr. Martel swore an affidavit in which he swore that he had not been served with the Statement of Claim in the Matrimonial Property Dispute. The Appellant says this affidavit was false. The Respondents relied upon this affidavit while acting for Mr. Martel to open up a default judgment that the Appellant had previously obtained. She alleges that the Respondents presented this affidavit "knowingly and in bad faith".

However, she provides no evidence of the alleged knowledge and bad faith and simply asserts them as facts. The chambers judge concluded that whether or not Mr. Martel lied in his affidavit does not translate into bad faith since there is no duty on counsel presenting an affidavit to court to verify that the information sworn to is true.

[12] We agree. Doubtless a lawyer owes a duty to the court not to offer into evidence an affidavit that he knows to be false or misleading. However, that does not mean that a lawyer must believe what his client swears to; still less does it mean that a lawyer has a duty to investigate to determine whether or not what his client states to be true is, in fact, true or false. Further, the duty to the court is a public duty and owed as an officer of the court to the court and not a private duty owed to the opposite side in the lawsuit. There is ample authority that the duties that a lawyer owes to the opposing party are viewed very restrictively: *German v. Major* (1985), 1985 ABCA 176 (CanLII), 62 A.R. 2 (C.A.). There are good policy reasons for this in the adversarial system. If it were otherwise, the conflicting duties owed by a lawyer would make the adversarial system impossible.

[59] Based on this entire line of cases, counsel for the defence submits that:

- a) Opposing counsel are immune from private law actions commenced by opposing parties.
- b) There are strong policy reasons for this immunity.
- c) The immunity covers both statements and acts taken in furtherance of the lawyers' client's position.
- d) All of the Bonner Plaintiffs' allegations are rooted in the Defendant Lawyers' work for Axion.
- e) Hence, the Defendant Lawyers are clearly covered by that immunity.

Analysis

[60] I return here to the submission of the Bonner Plaintiffs:

- a) The immunity only applies to statements made in the course of advocacy. It is not intended to cover intentional litigation conduct.
- b) The ANOCC alleges intentional conduct (i.e. acts, not statements) that go beyond the protections provided in the caselaw.

- c) The plaintiffs have suffered actual loss of assets (as alleged in the ANOCC).
- d) Rule 9-5(1) provides a very high bar for the dismissal of a claim. It must be plain and obvious that the claim will not succeed.
- e) The immunity is not absolute. There are “lanes” whereby the plaintiffs could be successful on this action.

[61] I accept that Rule 9-5 provides a high bar for dismissal. I further accept that, if proven, the Bonner Plaintiffs’ allegations would establish the loss of assets.

[62] However, those elements cannot overcome the clear intention of the public policy that forms the basis of the immunity provided to counsel. The immunity clearly covers acts as well as statements. It covers things said and done inside and outside the courtroom, if done in service of the client.

[63] In my opinion, the allegations in the ANOCC fit squarely within the reasoning of the cases noted above. In my opinion, the immunity clearly attaches to the Defendant Lawyers.

[64] Seen from another perspective, if I allowed this action to proceed, it would become a blueprint for the next wronged party to sue the opposition counsel. That is the very underpinning of a public policy; to avoid this type of action.

Abuse of Process

[65] I noted above that defence counsel raises a separate issue with the plaintiff’s claim of abuse of process.

[66] Having addressed the main portion of the defendants’ application, I need not address this issue.

Decision

[67] Based upon the reasoning in the cases discussed above, and my analysis of the ANOCC, I grant the defence application. The ANOCC is struck, and the action is dismissed.

[68] The defence seeks a lump sum award of costs of \$2,000. I note that the ANOCC made allegations of fraudulent conduct. In my opinion the \$2,000 award is a reasonable figure given the allegations made and the steps taken in this matter.

“A. Ross J.”