IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Choi v. Nabeel,*
2026 BCSC 151

Date: 20260130
Docket: S250347
Registry: Vancouver

Between:

Munchang Choi

Plaintiff

And

Abrahani Nabeel, Seely Brocklebank, Danielle Burgess, Jami Fowlie, Craig Maynard and WorkSafeBC

Defendants

Before: The Honourable Madam Justice W.A. Baker

Reasons for Judgment

The Plaintiff, appearing in person:	M. Choi
Counsel for Defendants:	R.J. Androsoff
Written Submissions of Plaintiff:	October 17, 2025
Written Submissions of Defendants:	September 26, 2025 October 23, 2025
Place and Date of Judgment:	Vancouver, B.C. January 30, 2026

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Introduction

[1] The defendants bring this application to strike the claim brought by Mr. Choi against WorkSafeBC (the "Board") and its employees, on the basis that the claim discloses no viable cause of action.

[2] Mr. Choi filed his amended notice of civil claim on June 12, 2025. He brought this claim as a result of his complaints with his treatment by the Board. Mr. Choi sought accommodation from the Board to proceed with his complaint in writing, to address his psychiatric disorder. He alleges that he provided medical documentation to support his position that he could not "process real-time verbal exchanges due to mental health symptoms such as confusion, panic attacks, auditory hallucinations, and disassociation." The Board did not accommodate him and continued its communication with Mr. Choi over the telephone.

[3] Mr. Choi alleges the Board's failure to accommodate him resulted in serious medical consequences for him, and resulted in all his claims being rejected.

[4] On this application, Mr. Choi applied for an accommodation to require this application by the defendants to proceed by way of written submission. This accommodation was granted.

Issues

[5] The issues on this application are:

a) What is the legal test under Rule 9-5(1) of the *Supreme Court Civil Rules*?

b) Does Mr. Choi's notice of civil claim disclose any reasonable causes of action?

c) Does the Court have jurisdiction to order the relief sought in this action?

What is the legal test under Rule 9-5(1) of the Supreme Court Civil Rules?

[6] Rule 9-5(1) confirms the power of the court to dismiss a claim which cannot succeed. It is admittedly a draconian power and, if the plaintiff has any chance of succeeding, he should not be driven from the judgment seat. In this way, novel claims will be permitted to proceed, provided the claim as drafted, or as it could reasonably be amended, contains the essence of a viable claim. Only a claim which contains a radical defect which makes the claim bound to fail should be dismissed: *Hunt v. Carey Canada Inc.,* [1990] 2 S.C.R. 959 at pp. 980-981.

[7] Mr. Choi sought to rely on affidavit evidence to demonstrate the facts he alleges in his claim are true. However, on an application under Rule 9-5(1)(a) seeking to strike a claim on the basis that it discloses no reasonable claim, such as the application before me, the court must proceed as if the facts pleaded are true. Therefore, it is not appropriate to submit affidavits going to the truth of the pleaded facts. Mr. Choi is entitled to the benefit of the court's assumption that, for the purposes of this application, the facts he has pleaded are true.

[8] The Supreme Court of Canada summarized the relevant law in *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 19-22:

> [19] The power to strike out claims that have no reasonable prospect of success is a valuable housekeeping measure essential to effective and fair litigation. It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go on to trial.
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> [20] This promotes two goods — efficiency in the conduct of the litigation and correct results. Striking out claims that have no reasonable prospect of success promotes litigation efficiency, reducing time and cost. The litigants can focus on serious claims, without devoting days and sometimes weeks of evidence and argument to claims that are in any event hopeless. The same applies to judges and juries, whose attention is focused where it should be — on claims that have a reasonable chance of success. The efficiency gained by weeding out unmeritorious claims in turn contributes to better justice. The more the evidence and arguments are trained on the real issues, the more likely it is that the trial process will successfully come to grips with the parties' respective positions on those issues and the merits of the case.
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> [21] Valuable as it is, the motion to strike is a tool that must be used with care. The law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed. Before *Donoghue v. Stevenson*, 1932

> CanLII 536 (FOREP), [1932] A.C. 562 (H.L.) introduced a general duty of care to one's neighbour premised on foreseeability, few would have predicted that, absent a contractual relationship, a bottling company could be held liable for physical injury and emotional trauma resulting from a snail in a bottle of ginger beer. Before *Hedley Byrne & Co. v. Heller & Partners, Ltd.*, [1963] 2 All E.R. 575 (H.L.), a tort action for negligent misstatement would have been regarded as incapable of success. The history of our law reveals that often new developments in the law first surface on motions to strike or similar preliminary motions, like the one at issue in *Donoghue v. Stevenson.* Therefore, on a motion to strike, it is not determinative that the law has not yet recognized the particular claim. The court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial.
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> [22] A motion to strike for failure to disclose a reasonable cause of action proceeds on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven: *Operation Dismantle Inc. v. The Queen*, 1985 CanLII 74 (SCC), [1985] 1 S.C.R. 441, at p. 455. No evidence is admissible on such a motion: r. 19(27) of the *Supreme Court Rules* (now r. 9-5(2) of the *Supreme Court Civil Rules*). It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The claimant may not be in a position to prove the facts pleaded at the time of the motion. It may only hope to be able to prove them. But plead them it must. The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted.

[9] This law is accepted by both parties. The issue before me is the effect of this law on Mr. Choi's claims.

Does s. 332 of the *Workers Compensation Act* bar Mr. Choi's claims?

[10] Section 332 of the *Workers Compensation Act*, R.S.B.C. 2019 c. 1 (the "*Act*") prohibits an action being brought against the Board and its employees for any act, omission or decision:

> **Protection for Board, directors, officers and employees**
>
> 332 An action may not be maintained or brought against the Board or a director, officer or employee of the Board in respect of any act, omission or decision
>
> (a) that was within the jurisdiction of the Board, or
>
> (b) that the Board, director, officer or employee believed was within the jurisdiction of the Board.

[11] Mr. Choi's claim asserts that the Board is a statutory body created under the *Act*, and that the personal defendants are all agents or employees of the Board engaged in the conduct complained of "while acting in the course and scope of their employment".

[12] Mr. Choi submits that the conduct complained of did not arise in the adjudicative function of the defendants, but rather arises out of their "non-adjudicative operational behavior" in refusing to accommodate his preferred communication modality.

[13] Section 332 prohibits a claim being brought against the Board or its employees for **any** act, omission or decision. This language is broad enough to bar a claim being brought in respect of operational decisions of employees of the Board, including the decision to proceed with Mr. Choi's claim by way of the telephone.

[14] In *Lam v Landmark Health Corp.*, 2023 BCSC 1782 the court considered s. 332 in the context of a claim alleging decisions made under the *Act* were wrongly decided for a number of reasons directed at actions taken by the defendants. The defendants were the Workers' Compensation Board of BC, the Workers' Compensation Appeal Tribunal [WCAT], and a number of personal defendants retained by the Board to provide various medical services to the plaintiff. The court considered both s. 332 of the *Act*, and s. 56 of the *Administrative Tribunals Act*, SBC 2004, c. 45, and found that both sections operated to preclude the action being advanced.

[15] I find that s. 332 of the *Act* prohibits a claim being brought by Mr. Choi in relation to the actions of the personal defendants who were acting in the course of their employment by the Board, and in relation to the Board itself. No amendments to the claim can be made to overcome this statutory bar.

[16] On the basis of s. 332 of the *Act* I strike the amended notice of civil claim in this action, without leave to amend.

Does Mr. Choi's claim disclose any reasonable causes of action?

[17] I have also considered whether, in the absence of s. 332 of the *Act*, any reasonable claims are disclosed in Mr. Choi's claim. Under the "legal basis" of his claim, Mr. Choi states that he is not challenging the merits or findings of any WCAT or WorkSafeBC decision. Rather, he seeks compensation for "independent tortious harm caused by administrative failures to accommodate a known psychiatric disorder." Mr. Choi then sets out four separate claims: negligence, breach of statutory duty under the *Human Rights Code*, R.S.B.C. 1996 c. 210 [*Code*] and the *Canadian Charter of Rights and Freedoms* [*Charter*], psychiatric injury and mental distress, and failure to accommodate under the *Charter*.

Negligence

[18] Mr. Choi asserts the defendants owed him a duty of care to take reasonable steps to accommodate his disabilities. The law is clear that the Board does not owe parties a private law duty of care in the exercise of its quasi-judicial functions. This has been affirmed by this Court and the Court of Appea.

[19] In *Burns et al. v British Columbia (Workers Compensation Board)*, 2003 BCSC 1826, the claimant asserted that he did not challenge the decisions at issue, but alleged the Board failed to train its workers resulting in claims in negligence, breach of fiduciary duties, misrepresentation, breach of trust, and fraud. The Court held that no duty of care arises in respect of the exercise of quasi-judicial functions, and in the absence of a duty of care, no claim in negligence could succeed.

[20] Similarly, in *Chisamore v. Cumis Life Insurance Company et al.*, 2006 BCSC 462 at para 25-26, aff'd 2006 BCCA 557, the Court confirmed that the Board cannot be sued for negligence in the exercise of its exclusive jurisdiction, and owes no private law duty of care to a claimant.

[21] While Mr. Choi does not challenge the decisions reached in his case, he nevertheless challenges the actions taken by the Board's employees in the exercise of their adjudicative processes under the *Act*. He alleges that he was "unable to

participate meaningfully in the adjudication of his claims before WorkSafeBC and related administrative tribunals, as all key decisions were made through phone calls without proper informed consent or opportunity for written rebuttal. As a result, his claims were rejected and appeals were compromised."

[22] I find that allegations against the defendants arise in the exercise of the Board's quasi-judicial functions. As such, I find that the defendants do not owe a private law duty of care to Mr. Choi.

[23] I find that Mr. Choi has not pled a reasonable cause of action in negligence, and it is plain and obvious that such claim cannot succeed.

Breach of Statutory Duty

[24] Mr. Choi relies on both the *Code* and The Canadian *Charter of Rights and Freedoms*. In relation to the *Code*, Mr. Choi submits that discrimination based on mental disability is prohibited, and accommodation is required. In relation to the *Charter*, Mr. Choi submits that his s. 7 and s. 15(1) rights have been infringed.

[25] There is no tort of discrimination in British Columbia. The BC Human Rights Tribunal ["Tribunal"] has exclusive jurisdiction to adjudicate complaints brought under the *Code*. This has been confirmed in many cases including: *Gichuru v. The Law Society of British Columbia,* 2014 BCCA 396 at para. 103*; Pyper v. The Law Society of British Columbia*, 2017 BCCA 410 at paras. 19-22; and *Nagra v Coast Mountain Bus Company (Translink)*, 2023 BCSC 2312 at paras. 58-62. As such, I find that Mr. Choi has not pleaded a reasonable cause of action for any breaches of the *Code*.

[26] Section 7 of the *Charter* guarantees the right to "life, liberty and security of the person". Mr. Choi has alleged no facts which engage s. 7, and this claim cannot stand.

[27] Section 15 of the *Charter* guarantees the right to "equal protection and equal benefit of the law without discrimination". The Supreme Court of Canada in *Ernst v.*

Alberta Energy Regulator, 2017 SCC 1, has held that statutory decision makers cannot be subjected to claims for *Charter* damages generally, and particularly not in the face a statutory immunity such as in the case before me:

> [54] Furthermore, allowing Charter damages claims to be brought for the Board's actions and decisions has the potential to distort the appeal and review process. The corollary of immunity is that a judicial or quasi-judicial decision can be challenged only through judicial review or the appeals process: Royer v. Mignault, 1988 CanLII 445 (QC CA), [1988] R.J.Q. 670 (C.A.), at pp. 673-74. This prevents judicial and quasi-judicial decision-makers from having to justify their decisions beyond the justification disclosed by the record which will be available for appeal or judicial review: Canada (Attorney General) v. Slansky, 2013 FCA 199, [2015] 1 F.C.R. 81, at para. 136, per Mainville J.A., concurring. It is worth remembering that in order not to compromise the decision-maker's impartiality or the finality of his or her decision, the decision-maker has a limited role in an appeal or judicial review proceeding: see, e.g., Ontario (Energy Board) v. Ontario Power Generation Inc., 2015 SCC 44, [2015] 3 S.C.R. 147. However, no such limit can apply to the scope of a quasi-judicial regulatory board's defence against damages claims. Moreover, damages claims against such bodies, whether under the Charter or otherwise, open up new avenues of collateral attack. By protecting judicial and quasi-judicial decision-makers from having to defend their decisions against damages suits, the immunity simultaneously strengthens public confidence in the legal system, preserves impartiality, both in fact and in perception, and closes off routes of collateral attack. See MacKeigan v. Hickman, 1989 CanLII 40 (SCC), [1989] 2 S.C.R. 796, at pp. 828-30.
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> [55] To conclude on this point, the policy reasons that underlie the common law and statutory immunities for regulatory and quasi-judicial boards like this one relate directly to the types of good governance concerns identified in *Ward*. Opening the Board to damages claims will distract it from its statutory duties, potentially have a chilling effect on its decision making, compromise its impartiality, and open up new and undesirable modes of collateral attack on its decisions.

[28] I find that Mr. Choi cannot assert a claim for *Charter* damages arising out of the conduct of the Board or its employees in the adjudicative process undertaken vis-à-vis Mr. Choi.

Psychiatric Injury and Mental Distress

[29] Mr. Choi asserts a separate claim for psychiatric injury and mental distress, relying on the case of *Saadati v. Moorhead*, 2017 SCC 28. However, *Saadati* involved a claim in negligence. There is no question that damages may be awarded for mental distress and injury in an appropriate case. However, such damages are

not free standing and must arise as a result of some breach or tort. In this case, no reasonable claim that could give rise to such damages has been pleaded.

Failure to Accommodate

[30] Mr. Choi relies on *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229 for the proposition that he is entitled to damages arising from the defendants' failure to accommodate. It is not entirely clear to me the relevance of this case to the claims brought by Mr. Choi. *Andrews* is a negligence case, reviewing certain damage awards and is typically used to establish the upper limit of a non-pecuniary damages award. It does not establish a right to damages for a failure to accommodate a disability.

Does the Court have jurisdiction to order the relief sought in this action?

[31] The final question on this application is whether the relief sought by Mr. Choi is available to the Court. I leave to one side the question of damages, as if a reasonable cause of action had been established, this Court could order damages. However, Mr. Choi also seeks a declaration that the defendants breached their duty to accommodate, an order that the defendants implement mandatory training, and an injunction prohibiting the defendants from communicating with him by telephone.

[32] Section 37(2)(d)(iii) of the *Code* gives the Tribunal the jurisdiction to make declaratory orders with respect to discrimination under the *Code*. The reasoning in *Seneca College of Applied Arts and Technology v. Bhadauria*, [1981] 2 S.C.R. 181 at pp. 194-195 in relation to the *Ontario Human Rights Code* is equally applicable here:

> In the present case, the enforcement scheme under *The Ontario Human Rights Code* ranges from administrative enforcement through complaint and settlement procedures to adjudicative or quasi-adjudicative enforcement by boards of inquiry. The boards are invested with a wide range of remedial authority including the award of compensation (damages in effect), and to full curial enforcement by wide rights of appeal which, potentially, could bring cases under the Code to this Court. The Ontario Court of Appeal did not think

> that this scheme of enforcement excluded a common law remedy, saying in the words of Wilson J.A. (which I repeat):
>
> Nor does the *Code,* in my view, contain any expression of legislative intention to exclude the common law remedy. Rather the reverse since s. 14(*a*) appears to make the appointment of a board of inquiry to look into a complaint made under the *Code* a matter of ministerial discretion.
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> I would have thought that this fortifies rather than weakens the Legislature's purpose, being one to encompass, under the Code alone, the enforcement of its substantive prescriptions. It is unnecessary to consider here how far the Minister's discretion is untrammelled, or whether a clue to its character is afforded by the ensuing provisions for appeal to the courts from a decision or order of a board of inquiry.
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> The view taken by the Ontario Court of Appeal is a bold one and may be commended as an attempt to advance the common law. In my opinion, however, this is foreclosed by the legislative initiative which overtook the existing common law in Ontario and established a different regime which does not exclude the courts but rather makes them part of the enforcement machinery under the Code.
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> For the foregoing reasons, I would hold that not only does the Code foreclose any civil action based directly upon a breach thereof but it also excludes any common law action based on an invocation of the public policy expressed in the Code. The Code itself has laid out the procedures for vindication of that public policy, procedures which the plaintiff respondent did not see fit to use.

[33] In *Nagra*, Mr. Justice Brongers similarly concluded that any relief sought for a violation of the *Code* must be brought before the Tribunal, and such relief may not be sought in an action before the Court (paras. 58-62).

[34] In *Lockyer-Kash v. Workers' Compensation Board*, 2013 BCCA 459, the Court confirmed that where a matter had been entrusted to an administrative body, such as the Board in this case, an action for declaratory relief cannot be brought before this Court:

> [25] An action in the Supreme Court that asks the court to make declarations of rights to workers' compensation is an invitation to the court to trench on the exclusive jurisdiction of the WCB and WCAT in a manner that is contrary to ss. 96, 254 and 255 of the *Act*. The court cannot accept such an invitation. Accordingly, a declaratory action of the sort advanced by Ms. Lockyer-Kash in this case is appropriately struck out as under Rule 9-5(1) on the basis that it does not disclose a reasonable claim.

[35] Mr. Choi seeks an order for an injunction against the defendants. However, the defendants are a government body (and its employees and agents). As such,

Mr. Choi would have to access a prerogative writ to obtain an order prohibiting (or enjoining) the Board from acting in a particular manner. As confirmed by the Court in *Lockyer-Kash*, prerogative writs are only available through the exercise of the Court's supervisory jurisdiction on a judicial review:

> [27] The only jurisdiction of the Supreme Court to interfere with orders of the WCB and WCAT in respect of workers' compensation is the supervisory jurisdiction of the court in judicial review. That jurisdiction is exercised through the granting of orders in the nature of *certiorari*, *mandamus* and prohibition; under s. 12 of the *JRPA*, those remedies are only available by way of an application for judicial review.

[36] The Court has no jurisdiction to make such an order in an action, such as this filed by Mr. Choi.

[37] In the result, Mr. Choi seeks relief that this Court has no jurisdiction to order.

Disposition

[38] I order the amended notice of civil claim in this action struck, without leave to amend, and the action dismissed, pursuant to Rule 9-5(1) of the Supreme Court Civil Rules.

[39] I order costs at Scale B in favour of the defendants.

"W.A. Baker J."