IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Aquino v. University of British Columbia,* 2026 BCSC 230

Date: 20260211
Docket: S252938
Registry: Vancouver

Between:

Sergio Aquino

Plaintiff

And

University of British Columbia

Defendant

Before: Associate Judge Robinson

Reasons for Judgment

The Plaintiff, appearing in person:	S. Aquino
Counsel for the Defendant:	J. Antifaev
Place and Date of Hearing:	Vancouver, B.C. February 3, 2026
Place and Date of Judgment:	Vancouver, B.C. February 11, 2026

Introduction

[1] The defendant, the University of British Columbia (the "University"), brings this application to strike the plaintiff's amended notice of civil claim under R. 9-5(1) of the *Supreme Court Civil Rules*, BC Reg 168/2009.

[2] The amended notice of civil claim was filed by the plaintiff on May 12, 2025, less than one month after the original notice of civil claim had been filed on April 16, 2025.Both the original pleading and the amended pleading which is at issue on this application concern a series of events which occurred over a one-week period in March 2025.

[3] As originally constituted, the notice of civil claim alleged that:

a) On March 4, 2025, the plaintiff served an executive assistant at the University's president's office with a Human Rights complaint that he had filed with the British Columbia Human Rights Tribunal (the "Complaint"). The Complaint referenced the University as well as certain professors;

b) Thereafter, on March 8, 2025 both the plaintiff and his son were "physically assaulted" by two of the professors named in the Complaint as Dr. W. Sott Dunbar and Professor Emeritus Marcello M. Veiga. The alleged physical assault consisted of Dr. Dunbar touching the plaintiff's sons leg. There are no allegations that the plaintiff was physically assaulted on this occasion and the plaintiff's son is not a party to the litigation; and

c) The following day, on March 9, 2025, the plaintiff and his son were subjected to inappropriate and homophobic remarks by four people, described as a "family group", comprised of two adolescents and two older adults, who identified themselves as friends of Professor Viega. The identity of these verbal assailants is not disclosed in the pleadings and there is no allegation that the remarks to which the plaintiff and his son

were allegedly subjected were made at the urging or at the insistence of Professor Viega, or anyone else associated with the University.

[4] The plaintiff says that the foregoing events caused or contributed to a multitude of injuries and health issues, including anxiety, heart palpitations and psychological distress.

[5] In setting out the legal basis for his claim, the plaintiff pleads:

a) assault and battery (alluding to the University being vicariously liable for the acts of its employees);

b) negligence (he alleges that the University breached its duty of care in failing to provide him and his son with an environment free from violence, harassment and discrimination and in failing to adequately investigate the Complaint;

c) intentional infliction of mental suffering (this allegation concerns the alleged homophobic remarks allegedly directed at the plaintiff and his son by the unknown "family group" described above); and

d) breach of the university's statutory duties arising under the *Human Rights Code*, RSBC 1996, c 210 (the "*Code*").

[6] The amended notice of civil claim with which the present application is concerned, augments the original pleadings to include allegations regarding the University's handling of the Complaint. He alleges that after being served with the Complaint on March 4, 2025, he expected the University to initiate an investigation and alleges that the Complaint was wrongfully or unlawfully disclosed Dr. Dunbar and Professor Viega (both of whom are named in the Complaint).

[7] That, however, was not the end of the plaintiff's amendments. He proceeded to file further amended notices of civil claim thereafter on August 14, 18 and 25, 2025. These further amended notices of civil claim were filed without the consent of

the University and without leave of the Court. Accordingly, none constituted proper or valid amendments: R. 6-1(1).

[8] At the outset of the hearing of this application, the plaintiff applied to rectify his non-compliance with the *Rules* and sought leave *nunc pro tunc* to allow the further amended notice of civil claim, filed Augst 25, 2025 to stand as his pleading in this litigation. I dismissed the plaintiff's application and provided oral reasons for doing so.

[9] Notwithstanding that, it is nonetheless helpful review the iterations of the notice of civil claim filed after May 12, 2025. Doing so clarifies the nature of the plaintiff's claim and provides insight as to how any identified issues might be addressed by way of further amendment.

[10] In this regard, the version filed on August 12, 2025, states:

> This action arises from the defendant's negligent and improper handling of Plaintiff's written complaint submitted to the Office of UBC's President, and the subsequent unauthorized disclosure of said complaint's contents to two professors who then engaged in intimidating conduct by confronting the Plaintiff and Plaintiff's son at a public restaurant.

[11] In that same pleading, the plaintiff has deleted reference to a claim for breach of any statutory duties arising under the *Code*, but has added references "criminal harassment", "intimidation", "conspiracy" and "breach of privacy" as bases for liability. The criminal harassment and intimidation claims seemingly relate to the plaintiff's alleged interactions on March 8- 9, 2025, and the claim for breach of privacy stems from the University's alleged disclosure of the Complaint to the two professors without first conducting and completing an investigation into the matters of which the plaintiff complained.

[12] In version of the notice of civil claim filed on August 18, 2025, the plaintiff bolstered his prior allegations. Notably, in respect of his alleged interaction with Dr. Dunbar and Professor Viega on March 8, 2025, he pleads that the two of them confronted him and his son and then proceeded to verbally and physically harass them. The harassment allegedly included Professor Viega, shouting to the plaintiff

that: “he had a gun”; “he would go back to Brazil if necessary”; and “he held a diplomatic passport”. He also alleges that during this interaction, Dr. Dunbar informed the plaintiff that he, Dr. Dunbar, had been sent to the restaurant by the University’s president before proceeding to make homophobic remarks directed at the plaintiff’s son and touching the plaintiff’s son on the leg. The pleadings go on to allege that, while this interaction was taking place, another person in the restaurant who “may or may not have been Dr. Dunbar’s wife” was observed sitting nearby holding her purse in a way that suggested that she “may or may not have a gun”.

[13] The final iteration of the notice of civil claim (for which leave to file was sought and denied) dated August 25, 2025, largely restates the matters raised in prior versions. However, the uncertainty concerning the person “who may or may not have been Dr. Dunbar’s wife” was seemingly resolved over the course of seven days, since that same person is described in the pleading as having accompanied Dr. Dunbar to the restaurant. Moreover, the doubt as to whether that same person “may or may not have had a gun” is likewise seemingly resolved since Dr. Dunbar allegedly “stated she had a gun”.

[14] Although the amended notices of civil claim filed after May 12, 2025 are nullities, a review of the allegations therein informs the nature of the plaintiff’s claims in this litigation. In this respect, the plaintiff’s claim concerns what can most generously be described as three bases on which he seeks to ascribe liability to the University. They are:

a) The University improperly and unlawfully disclosed the Complaint to Dr. Dunbar and Professor Viega;

b) The University failed to carry out a proper investigation into the Complaint; and

c) After being made aware of the Complaint (allegedly by the University), Dr. Dunbar and Professor Viega confronted the plaintiff at a local restaurant at

which time both the plaintiff and the plaintiff's son were verbally accosted and the plaintiff's son was "touched" on the leg.

Law

[15] In bringing this application, the University relies on subrules 9-5(1)(a), (b) and (d) which provide:

> (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,
>
> (b) it is unnecessary, scandalous, frivolous or vexatious,
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> …
>
> (d) it is otherwise an abuse of the process of the court,
>
> and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[16] The foregoing constitutes a useful mechanism by which the court can "weed out" claims which are plainly and obviously bound to fail. The principles which inform the exercise of discretion in this regard were recently summarized by Madam Justice Baker in *Choi v. Nabeel*, 2026 BCSC 151 at para. 6-8:

> [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] … 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…
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> [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.

[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.

[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.

[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.

Issues

[17] The issues for resolution are:

a) Whether the claim is, in essence, a claim that the University (along with Dr. Dunbar and Professor Viega) subjected the plaintiff (and his son) to mistreatment as retaliation for him having brought and served the Complaint. The University says that claims of this nature are not within the jurisdiction of the court and are within the exclusive jurisdiction of the British Columbia Human Rights Tribunal;

b) Whether the amended notice of civil claim constitutes an abuse of process since it involves the same allegations raised by the plaintiff in the Complaint. The University argues that the initiation of two different proceedings concerning the same issues in two different forums constitutes an abuse of process; and

c) Leaving aside the jurisdiction issues and possible abuse of process, if the pleadings are read liberally and assumed to be true, do they set out a basis on which liability could be established. In other words, does the Amended Notice of Civil Claim plainly and obviously fail to disclose a cause of action.

Discussion

Does the court have jurisdiction to hear the claim?

[18] While the amended notice of civil claim does not expressly reference retaliation by the University, it is clearly implied that the plaintiff's alleged interactions on March 8-9, 2025 were motivated by and in response to his decision to name Dr. Dunbar and Professor Viega in the Complaint.

[19] Indeed, in a letter dated July 16, 2025 and addressed to counsel for the University, the plaintiff described what was at issue in the claims as follows:

> In plain terms: the University of British Columbia (UBC), under the leadership of President Benoit-Antoine Bacon, handled the Plaintiff's complaint irresponsibly. This is the core of the lawsuit. The repercussions were severe and included criminal conduct – the Plaintiff was assaulted and, subsequently required hospitalization. (sic)

[20] This is problematic because claims that the plaintiff was mistreated in retaliation for having filed the Complaint, are not within the jurisdiction of this court. The only forum in which the plaintiff may seek redress is the British Columbia Human Rights Tribunal.

[21] That claims concerning contraventions of Code are within the exclusive jurisdiction of the British Columbia Human Rights Tribunal is incapable of serious debate. In *Choi*, Madam Justice Baker restated the reasoning of the court in *Seneca College of Applied Arts and Technology v. Bhadauria*, [1981] 2 S.C.R. 181 at pp. 194-195:

> 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.
>
> 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.
>
> 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.
>
> 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. [emphasis added]

[22] Although the foregoing decision concerned the *Ontario Human Rights Code,* it is undeniably applicable in this Province: *Choi*, para. 32.

[23] The consequence of this was stated succinctly by Mr. Justice Baird in *Bulwer v. Canadian Mental Health Association and others*, 2016 BCSC 1110 at para. 15:

> [15] It is plain and obvious that the pleadings alleging human rights violations must be struck. Mr. Bulwer is precluded from pursuing common law remedies for alleged substantive violations of human rights enactments because these have been held to contain their own comprehensive enforcement schemes … The rationale for this limitation was repeated and approved in *Keays v. Honda Canada Inc.*, 2008 2 S.C.R. 362 at paras. 63 to 66 citing policy concerns about indeterminate liability, forum shopping, and the need for deference to the specialised processes created by legislatures across the country to deal with such matters. [emphasis added]

[24] With the foregoing in mind, it is necessary to determine whether the pleadings in this case allege human rights violations. If so, those pleadings must be struck under R. 9-5.

[25] In making this determination, it is notable that, in addition to prohibiting discrimination on certain enumerated grounds, the *Code* similarly prohibits retaliation against complainants who have availed themselves of their right to bring a complaint. In this regard, s. 43 states:

> A person must not evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on, deny a right or benefit to or otherwise discriminate against a person because that person complains or is named in a complaint, might complain or be named in a complaint, gives evidence, might give evidence or otherwise assists or might assist in a complaint or other proceeding under this Code.

[26] Although the provision does not expressly refer to “retaliation”, its intent is clear. It prohibits punitive or adverse treatment in response to a person’s decision to exercise rights or obligations arising under the *Code: Gichuru v. Law Society of BC,* 2010 BCCA 543.

[27] A contravention of s. 43 will be found in circumstances where a complainant establishes that:

a) The respondent was aware that a *human rights* complaint has been made or might be made;

b) The respondent subjected the complainant adverse treatment as set out in s. 43; and

c) The respondent can reasonably be perceived to have been motivated to subject the complainant to adverse treatment in relation to the complaint, with the reasonable perception being assessed from the perspective of a reasonable complainant.

See: *Green v. Barry and another*, 2017 BCHRT 112 and *Bissonnette v. School District No. 63 and Frizzell*, 2006 BCHRT 447.

[28] In my view, the entirety of the amended notice of civil claim falls squarely within the ambit of s. 43 of the *Code*. The plaintiff pleads a sequence of events which began with the service of the Complaint after which he was subjected to mistreatment by persons named in the complaint. In Part 3 of the amended notice of civil claim, he attributes much of the mistreatment to him having brought the complaint and pleads:

> The claimant further pleads the tort of intentional infliction of mental suffering. The claimant and their child were subjected to egregious, targeted and homophobic verbal abuse by individuals connected to UBC faculty, in the context of a previously reported human rights complaint …
>
> The claimant pleads that UBC is vicariously liable for the wrongful acts of its faculty members … The acts complained of were closely connected to the professors' roles within the University and occurred in the context of ongoing institutional processes involving the claimant's formal complaint.
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> The claimant also relies on a breach of statutory duty under the British Columbia Human Rights Code, R.S.B.C. 1996, c. 210 … The failure of UBC to respond appropriately to the claimant's complaint and to prevent continued harassment and abuse constituted discrimination on the basis of sexual orientation and family status.

[29] I have no hesitation in finding that each of the foregoing claims are within the exclusive jurisdiction of the Human Rights Tribunal and must be struck in their entirety.

[30] However, those are not the only claims raised in the amended notice of civil claim. The plaintiff also asserts that the University is liable in negligence (in failing to provide properly deal with the Complaint, including an inadequate investigation into the Complaint); and for the alleged assault and battery carried out by Dr. Dunbar and Professor Viega.

[31] While this court unquestionably has jurisdiction to hear and consider claims framed as torts, that does not necessarily lead to the conclusion that the claims in this context are within the court's jurisdiction. The analysis to be followed is that described by Madam Justice McLachlin in *Weber v. Ontario Hydro,* [1995] 2 SCR 929.

[32] *Weber* concerned a civil action brought by an employee against his employer. After sustaining an injury, he availed himself of a leave of absence and received sick-leave benefits. Over time, the employer began to suspect malingering and engaged private investigators to undertake surveillance of the employee. The private investigators entered onto the employee's property and, under false pretenses, gained entry to the employee's home. Based on the information obtained in that visit, the employer discontinued the employee's benefits and suspended him from his employment.

[33] The employee initiated a grievance under the terms of the collective agreement in place between his union and the employer. Among other things, the grievance sought orders prohibiting the future use of private security firms to monitor health absences and requiring the employer to pay the employee damages for mental anguish and suffering arising out of the surveillance. The grievance was settled in 1990, prior to arbitration.

[34] In the meantime, in December 1989, the employee commenced a separate civil action in respect of the same events. However, the civil action was based on tort and breach of his *Charter* rights, claiming damages for the surveillance. The torts alleged were trespass, nuisance, deceit, and invasion of privacy. Weber's claims under the *Canadian Charter of Rights and Freedoms* concerned alleged breaches of his rights under ss. 7 and 8.

[35] The employer applied to strike the civil action relying on s. 45(1) of the *Labour Relations Act*, R.S.O. 1990, c. L.2, as follows:

> 45(1) Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.

[36] The court began with uncontroversial position that s. 45(1) prohibits civil actions based “solely” on the collective agreement. The remaining issue for determination was characterized as: “To what extent does s. 45(1) oust the courts' jurisdiction … generally”: para. 37.

[37] The court considered three alternative models to resolve the issue.

[38] First, the court considered but rejected a concurrent model jurisdiction. Madam Justice McLachlin held that regardless of the manner in which a claim is framed or characterized, the issue is:

> [43] … whether the dispute is one ‘arising under [the] collective agreement’. Where the dispute, regardless of how it may be characterized legally, arises under the collective agreement, then the jurisdiction to resolve it lies exclusively with the labour tribunal and the courts cannot try it.
>
> [44] … what matters is not the legal characterization of the claim, but whether the facts of the dispute fall within the ambit of the collective agreement.

[39] The court similarly considered and rejected an overlapping jurisdiction model in which the court would have and could exercise jurisdiction over matters that go beyond the traditional subject matter of labour law (such as trespass, nuisance, deceit and the unreasonable interference with and invasion of privacy).

[40] Despite recognizing the overlapping jurisdiction model as “more attractive” than the concurrent jurisdiction model, it was nevertheless rejected with the majority holding:

> [49] … one must look not to the legal characterization of the wrong, but to the facts giving rise to the dispute. It would also leave it open to innovative pleaders to evade the legislative prohibition on parallel court actions by raising new and imaginative causes of action … This would undermine the legislative purposes underlying such provisions and the intention of the parties to the agreement. This approach, like the concurrency model, fails to meet the test of the statute, the jurisprudence and policy.

[41] The court ultimately concluded that an exclusive jurisdiction model was most appropriate. Effectively, if a dispute or difference “arises out of the collective agreement” it is a dispute over which the court has no jurisdiction. Whether a dispute “arises out of the collective agreement” depends on a review of both the dispute and the ambit of the collective agreement:

> [52] In considering the dispute, the decision-maker must attempt to define its "essential character" … The fact that the parties are employer and employee may not be determinative. Similarly, the place of the conduct giving rise to the dispute may not be conclusive; matters arising from the collective agreement may occur off the workplace and conversely, not everything that happens on the workplace may arise from the collective agreement … In the majority of cases the nature of the dispute will be clear; either it had to do with the collective agreement or it did not. Some cases, however, may be less than obvious. **The question in each case is whether the dispute, in its essential character, arises from the interpretation, application, administration or violation of the collective agreement.** [emphasis added]

[42] I am of the view that that the reasoning of the court in *Weber* is applicable in the present context. An assessment of the court’s jurisdiction to hear and resolve the claims framed as torts requires the court to determine and define the essential character of those claims. If the essential character is a contravention of the *Code* and if the matter can be remedied under the provisions of the *Code*, then the matter is within the exclusive jurisdiction of the British Columbia Human Rights Tribunal.

[43] In applying this standard, it is helpful to set out the factual allegations which underpin the tort claims raised in the amended notice of civil claim as follows:

> On March 8, 2025 at approximately 3:30 pm, my 13-year-old son and I were physically assaulted by Dr. W. Scott Dunbar, who touched my son's leg, and Professor Emeritus Marcello M. Viega … These two individuals are among the four professors identified in my original complaint.
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> On March 9, 2025 at approximately 4:00 pm, my son and I were subjected to inappropriate and homophobic remarks from a family group consisting of two adolescents and two older adults who identified themselves as friends of Professor Emeritus Marcello M. Viega.
>
> I served UBC with the (Complaint) expecting the university to initiate an internal investigation. The plaintiff does not understand why the case was immediately disclosed to Professors Marcello M. Viega and W. Scott Dunbar before any investigation was conducted. This reflects poor management on the part of the President and Vice-Chancellor, under Benoit-Antoine Bacon's leadership.
>
> …
>
> The manner in which the situation was handled was not only inappropriate but also experienced as emotionally and psychologically violent by both myself and my 13-year-old son, Luca Berringer.

[44] The only plausible interpretation of these allegations is that the alleged tortious conduct of the University (and persons affiliated with the University) was set off by the Complaint and his service of the Complaint. The essential character of the dispute is one of retaliation, contrary to s. 43 of the *Code*. That being so, it is a matter over which the courts' jurisdiction is limited to one of oversight on an application for judicial review.

[45] Without addressing the merits of any of the claims pleaded in the amended notice of civil claim, I find that they constitute alleged contraventions of s. 43 of the *Code*. That being so, none of the claims are within the jurisdiction of the court and to the extent that they are pursued, must be pursued before the British Columbia Human Rights Tribunal with whom the legislature has entrusted exclusive jurisdiction.

[46] Given this finding, it is not necessary to address the other grounds raised by the University as bases for striking the amended notice of civil claim. However, in the interests of completeness, I will do so.

Does the Amended Notice of Civil Claim constitute an abuse of process?

[47] As discussed above, the University says that the initiation of concurrent proceedings (before the court and the British Columbia Human Rights Tribunal) concerning the same facts and allegations constitutes an abuse of process which must not be countenanced. I agree with this as a general proposition.

[48] The doctrine of abuse of process has been described as "… a 'flexible' one grounded first in the integrity of the administration of the justice system, and in finality, consistency and judicial economy": *Toronto (City) v. C.UP.E. Local 79*, 2003 SCC 63 at para. 37. Each of these considerations would be undermined by allowing concurrent proceedings potentially resulting in inconsistent findings.

[49] However, the application of the doctrine in this context necessitates a comparison of the amended notice of civil claim with the Complaint to ascertain whether, and to what extent, they are premised on the same factual assertions and seek the same remedies.

[50] I have reproduced large portions of the amended notice of civil claim in the foregoing and it is not necessary to do so again. Instead, I will focus on the Complaint.

[51] A review of the Complaint is complicated by the fact that the plaintiff appears to have filed multiple amendments and correspondence with the British Columbia Human Rights Tribunal such that I am unable to say what is being precisely alleged. Despite this, apart from the fact that both Complaint and the amended notice of civil claim concern the same parties, they contain minimal similarities. Whereas the latter is focused on alleged events which transpired in the Spring of 2025, the Complaint concerns the plaintiff's experience as a student at the University between the years 2015 and 2018. He alleges that during those years, while he was pursuing a graduate degree, he was assaulted and bullied. He says that he was targeted due to his religious beliefs and because of a perceived mental illness.

[52] This application does not require me to weigh the merits of the allegations in the Complaint and I do not purport to do so. My role is limited to determining whether or not the plaintiff is seeking to advance the same causes of actions in different forums relying on the same allegations and seeking the same remedies.

[53] Based on my reading of the Complaint, it bears no resemblance to the allegations in the amended notice of civil claim. Accordingly, the Amended notice of civil claim does not constitute an abuse of process and is not subject to being struck pursuant to R. 9-5(1)(d).

Does the Amended Notice of Civil Claim plainly and obviously fail to disclose a cause of action?

[54] Even if the court has jurisdiction to address the matters raised in the amended notice of civil claim (and I have already found that it does not), the deficiencies in the pleadings are such that they ought to be struck pursuant to R. 9-5(1)(a).

[55] Many of the allegations pleaded by the plaintiff in the amended notice of civil claim can be easily struck pursuant to subrule 9-5(1)(a). These include any allegations concerning the losses allegedly sustained by the plaintiff's 13-year-old son. The plaintiff's son is not a party to this litigation and the plaintiff has no standing to pursue claims on his son's behalf. This reality inevitably compels me to order that the portions of paras. 3 and 6 of Part 1 as well as paras. 1, 2 and 3 of Part 3 of the amended notice of civil claim which refer to the plaintiff's son be struck. Assuming those allegations are true, it is plain and obvious that they do not disclose a cause of action that can be pursued in this litigation.

[56] Likewise, the claim for "breach of statutory duty" under the *Code* is not a claim that the plaintiff can sustain in this court. The pleading set out at para. 5 of Part 3 must be struck as it does not constitute a cause of action.

[57] In terms of the remedies sought in Part 2 of the amended notice of civil claim, the plaintiff has improperly sought general damages in the amount of $75,000

contrary to the prohibition against stating a specific amount: R. 3-7(14). That pleading also must be struck. Similarly, the plaintiff seeks an order compelling the University undertake a review of its policies to ensure "compliance with the *Canadian Human Rights Act".* This not a remedy that the plaintiff can pursue in a civil action and accordingly para. 7 of Part 2 of the amended notice of civil claim must be struck.

[58] I turn now to consider the remaining allegations which remain after the foregoing deletions have been made. The pleadings are left with allegations that:

a) The University was negligent in failing to carry out a full investigation before disclosing the Complaint to Dr. Dunbar and Professor Viega; and

b) The University is vicariously liable for the acts of Dr. Dunbar and Professor Viega.

[59] Neither of these allegations can be sustained based on the pleadings.

[60] With respect to the University's alleged negligence, the plaintiff has not alleged that the University owed a duty of care and indeed, it is impossible to conceive of any private law duty that the University may have owed to the plaintiff to carry out an investigation upon becoming aware of the Complaint. Moreover, there is an internal inconsistency to the plaintiff's allegations. If the University was legally obligated to conduct an investigation as alleged, that obligation would have necessitated speaking with and potentially interviewing persons who were named in the Complaint – a group of persons which includes Dr. Dunbar and Professor Viega. In other words, disclosure of the Complaint to persons named therein was a part of the investigation that the plaintiff claims the University was legally bound to undertake.

[61] Likewise, there is no pleading of any private law duty of care owed by the University to maintain the Complaint in confidence. The plaintiff does not allege or even allude to any expectations of privacy or confidentiality and none necessarily arise as a matter of law.

[62] In the circumstances, even if it is accepted and assumed that the plaintiff can and will prove that the University failed to carry out or complete a thorough investigation and that the University shared details of the Complaint with persons named therein, no liability would arise. Accordingly, the claim in negligence is plainly and obviously bound to fail.

[63] The alleged vicarious liability of the University's is similarly problematic.

[64] First, once the claim involving the plaintiff's son's leg being touched is removed (as it must be), there are no allegations of any physical contact with the plaintiff himself. There is simply a bare assertion that he was "physically assaulted". This allegation is unsupported by any underlying facts which, if true, would constitute a basis for a finding of liability (and by extension, vicarious liability). To be clear, the plaintiff does not allege that he received unwanted physical contact from anyone. Rather, the alleged assault to which he was subject was allegedly comprised of being exposed to comments. Second, the assertion of vicarious liability is likewise unsupported by any facts. Instead, para. 4 of Part 3 of the amended notice of civil claim baldly asserts:

> The Claimant pleads that UBC is vicariously liable for the wrongful acts of its faculty members, including Dr. W. Scott Dunbar and Professor Emeritus Marcello M. Viega. The acts complained of were closely connected to the professor's roles within the University …

[65] As discussed above, there are no underlying facts as to which "wrongful acts" occurred (once the allegation concerning the touching of his son's leg is removed). However, to the extent that there were wrongful or tortious acts committed, there is no allegation that they were committed on an occasion while either of the individuals allegedly responsible were acting in their capacity as employees or agents of the University. Moreover, there is no allegation that either was subject to the direction or control of the University or that they were compelled to engaged in any wrongful acts by the urging of the University. The pleadings do not disclose or even allude to any basis on which the University may be vicariously liable for the alleged wrongful acts of two persons in circumstances where the plaintiff concedes that the wrongful acts

occurred outside of the University's premises when neither of the individuals were engaged in the duties of their employment. The bare assertion that the acts "were closely connected" to the professor's roles does not, without more, constitute the basis for a claim based on vicarious liability.

[66] It should also be noted that there is no basis pleaded as to why or how the University could be potentially liable for the acts of the unidentified family who allegedly verbally assailed the plaintiff on March 9, 2025. It was this interaction that the plaintiff relies upon as the basis for a claim based on "intentional infliction of mental suffering". However, the persons responsible for the alleged infliction are not alleged to have had any connection to the University.

[67] The result of all of this is that even if I had been satisfied that the allegations set out in the amended notice of civil claim fall within the court's jurisdiction, I would nevertheless have ordered the pleading struck in its entirety as it fails to disclose a cause of action.

[68] A liberal reading of the claims raised by the plaintiff in the amended notice of civil claim lead me to the inescapable conclusion that they are plainly and obviously bound to fail.

Summary

[69] As I have found that the amended notice of civil claim fails to disclose a cause of action within this court's jurisdiction, I order that it be struck in its entirety.

[70] I make this order without leave to the plaintiff to make further amendments. A review of his subsequent amendments in the iterations of the pleadings filed after May 12, 2025 makes clear that this is not a claim that is capable of being salvaged by clarifying language or better particulars. It is not simply that the pleadings are flawed, the underlying claim itself is incapable of saving.

[71] Having regard for this outcome, the action is dismissed and the University is entitled to its costs at Scale B.

"Associate Judge Robinson"