

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kavanagh v. Barbeau*,
2026 BCSC 406

Date: 20260312
Docket: S246393
Registry: Vancouver

Between:

**Doug Kavanagh, in his capacity as executor of the
Estate of Karl Johansson, deceased and as trustee of the
Karl Johansson Alter Ego Trust (2022), and 1450119 B.C. Ltd.**

Plaintiffs

And

**Paul S.O. Barbeau, Barbeau Evans LLP, Wolfgang Isachsen and Wolf
Consulting Inc.**

Defendants

And

**Doug Kavanagh, in his capacity as Executor of the Estate of Karl Johansson,
Deceased, Carlton Contractors Ltd., 1096102 B.C. Ltd., Three C Holdings Ltd.,
Canson Enterprises Ltd., Carlton Contractors Aktiebolag and
1450119 B.C. Ltd.**

Defendants by Counterclaim

Before: The Honourable Justice Laurie

Reasons for Judgment on Application to Strike Pleadings

Counsel for the Plaintiffs:

M. Charles

Counsel for the Defendants, Wolfgang
Isachsen and Wolf Consulting:

G. Cameron

Place and Date of Trial/Hearing:

Vancouver, B.C.
January 8, 2026

Place and Date of Judgment:

Vancouver, B.C.
March 12, 2026

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INTRODUCTION

[1] This is an application by the plaintiffs, Doug Kavanagh, in his capacity as executor of the Estate of Karl Johansson, deceased, and as trustee of the Karl Johansson Alter Ego Trust (2022), and 1450119 B.C. Ltd., to strike portions of the response to civil claim (the “RTCC”) filed by the defendants and application respondents, Wolfgang Isachsen and Wolf Consulting Inc., pursuant to Rules 9-5(1)(b) and 9-5(1)(c) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [SCCR], on the basis that the pleadings are unnecessary, scandalous, frivolous, prejudicial and embarrassing.

[2] The underlying claim is for damages and unjust enrichment arising from alleged breaches of various duties by Mr. Isachsen while acting as the sole director and officer of four companies owned by the deceased (the “Companies”), which are now amalgamated into the plaintiff 1450119 B.C. Ltd.

BACKGROUND

[3] The deceased, Mr. Johansson, was a successful businessman who passed away on October 25, 2022 at the age of 95. The defendant, Mr. Isachsen, is a businessperson and a real estate agent. Mr. Isachsen is also a director of the defendant Wolf Consulting Inc.

[4] In around 2006, Mr. Isachsen and Mr. Johansson began to conduct business dealings related to leases and the sale of properties owned by one or more of the Companies.

[5] In 2017, Mr. Johanssen appointed Mr. Isachsen as the sole director and officer of the Companies. Mr. Isachsen served in these capacities until May 2022.

[6] In the notice of civil claim filed on September 13, 2024 (the “Claim”), which was amended on July 9, 2025 (the “Amended Claim”), the plaintiffs allege that Mr. Isachsen and Wolf Consulting breached contractual, fiduciary, statutory and common law duties to the Companies, including by:

- a) Failing to enter into lease agreements with tenants;
- b) Failing to maintain proper accounting records for the Companies;
- c) Failing to obtain annual financial statements for the Companies;
- d) Failing to declare and pay taxes on the disposition of a property;
- e) Failing to make an election under the *Income Tax Act*, and
- f) Creating and accepting a bonus payment from one of the Companies.

[7] The Amended Claim also alleges unjust enrichment against Wolf Consulting in relation to the above-mentioned bonus payment.

[8] The plaintiffs seek damages of approximately \$7 million, consisting of fines and interest for failure to file corporate tax returns and delay in filing Mr. Johansson's terminal tax return, a wrongful bonus payment to Wolf Consulting, and loss of capital dividend account balance.

[9] In addition, the plaintiffs seek punitive damages for alleged malicious, oppressive, and high-handed conduct and flagrant disregard for the rights and well-being of the plaintiffs.

[10] In the RTCC filed on November 28, 2024, the respondents deny the alleged breaches of duties. The RTCC pleads that Mr. Isachsen at all times acted in the best interests of the Companies and did not create the financial mismanagement or tax problems complained of; rather, he "unknowingly walked into the deplorable state" of Mr. Johansson's and his companies' financial affairs.

[11] The RTCC also alleges that Mr. Johansson was engaged in tax evasion long before, and during, Mr. Isachsen's involvement as sole director and officer of the Companies and that Mr. Johansson maintained full control of the Companies and their real estate holdings even after stepping down as a director and officer. It also pleads that Mr. Isachsen took steps to correct Mr. Johansson's financial

mismanagement and to remediate matters including the tax problems; however, his efforts were “stymied by Johansson’s deception and ultimate control”. With respect to the alleged wrongful bonus, the RTCC pleads that it was the subject of a valid commission agreement regarding the sale of real estate.

POSITIONS OF THE PARTIES

The Applicants’ Position

[12] The applicants contend that while the plaintiffs’ claim centers on Mr. Isachsen’s failure to perform his fiduciary duties as an officer of the Companies, the RTCC relies heavily on inflammatory and disparaging statements and language meant to tarnish the reputation of Mr. Johansson. The applicants submit that none of these statements are material to any defence that the respondents could bring. As such, the statements are unnecessary, scandalous, frivolous, offensive and embarrassing.

[13] The portions sought to be struck from the RTCC are set out in “Appendix A” to the notice of application. The following are examples:

- a) Paragraph 7 pleads that Mr. Johansson “was engaged in illegality” and was involved in a “scheme he orchestrated against taxation authorities”.
- b) Paragraph 17 pleads that Mr. Johansson was “purposefully evading taxes for years” and engaged in “lifelong efforts to avoid paying taxes”; and
- c) Paragraph 22 pleads that Mr. Johansson commercially leased properties on informal terms with cash payments of rent “to evade taxation obligations”.

[14] Although the applicants acknowledge that the allegations of illegality and tax evasion by Mr. Johanssen may be relevant to the defence, they submit that they are not material to the defence.

[15] Further, the applicants submit that paras. 70, 73 and 74 of the RTCC, which address the collection of rent payments from tenants, ought to be struck as the

allegations related to failures to collect, deposit, and account for rents, as well as to pay taxes on rent payments, originally pleaded in the Claim have been removed in the Amended Claim.

[16] In addition, the applicants contend that paras. 109-119 in Division 3 of the RTCC in which the respondents describe business dealings between Mr. Johansson and Petra Capital Corp. (“Petra”) must be struck because they are irrelevant to any defence that Mr. Isachsen could bring regarding his obligations as a director of the Companies. It is submitted that the inclusion of these paragraphs serves to act as a strawman that will require significant additional disclosure, additional avenues for discovery, and time for examination.

[17] The allegations in paragraphs 109-119 include that:

- a) In around January 2019, without Mr. Isachsen’s knowledge, Mr. Johanssen signed a purchase receipt on behalf of one of the Companies, “Carlton”, for over \$1.5 million in gold from Petra;
- b) Mr. Johansson told Mr. Isachsen that Carlton needed to pay off a loan that Mr. Johansson had with RBC Dominion in respect of the Petra gold investment and that the loan would be paid from funds received by Carlton from the sale of its property;
- c) Despite Mr. Isachsen’s disagreement, Mr. Johansson ordered Mr. Isachsen to make the payments from Carlton; and
- d) Mr. Johanssen invested over \$2.6 million in Petra.

The Respondents’ Position

[18] The respondents submit that the pleadings in the RTCC set out material facts which raise a *bona fide* defence and are in direct response to the plaintiffs’ allegations. They assert that a “key plank” of the defence in this case is an allegation that Mr. Johansson was responsible for the improper tax filings on account of his ongoing efforts to avoid paying taxes and the “lies and mistruths” that he told the two

directors of his Companies, including Mr. Isachsen, as well as various legal and professional advisors. In other words, the respondents allege that Mr. Johansson's own conduct caused the losses claimed.

[19] With respect to paragraphs 70, 73 and 74, the respondents submit that the amendment of the Claim to remove the allegations that Mr. Isachsen failed to deposit, declare and pay taxes on rent payments from properties does not make the response pleadings irrelevant. The respondents allege that Mr. Johansson collected rent payments in cash and failed to account for those rent payments. The allegations remain relevant and material to the defence in that they demonstrate Mr. Johansson's pattern of behaviour of improper accounting to avoid paying taxes.

[20] With respect to the allegations in paras. 109-119, the respondents submit that they are relevant and material to their defence because they demonstrate Mr. Johansson's ultimate control over the Companies and their assets. Further, they provide a defence to the plaintiffs' claims that the respondents failed to pay capital gains for the sale of the property owned by Carlton, as the respondents allege that Mr. Johansson caused the funds from that transaction to be utilized in connection with Petra. In addition, the respondents contend that the disagreement between Messrs. Isachsen and Johansson over the use of the Companies' accounts to fund investments in Petra ultimately led to the end of their relationship, which is a disputed fact.

DISCUSSION

Governing Law and Legal Principles

[21] The applicable portions of Rule 9-5 of the *SCCR*, which deals with striking pleadings, 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,

(c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or

(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.

[22] In *Willow v. Chong*, 2013 BCSC 1083, Justice Fisher (then of this Court) summarized Rule 9-5(1)(b) as follows:

[20] Under Rule 9-5(1)(b), a pleading is unnecessary or vexatious if it does not go to establishing the plaintiff's cause of action, if it does not advance any claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the court's time and public resources: *Citizens for Foreign Aid Reform Inc. v Canadian Jewish Congress*, 1999 CanLII 5860 (BC SC), [1999] BCJ No. 2160 (SC); *Skender v Farley*, 2007 BCCA 629. If a pleading is so confusing that it is difficult to understand what is pleaded, it may also be unnecessary, frivolous or vexatious. An application under this sub-rule may be supported by evidence.

[23] Rule 9-5(1)(b) requires that something more than superfluous be established. That "something more" includes pleadings that are so confusing that it is difficult to understand what is being pleaded, so irrelevant that they will involve the parties in useless expense, or otherwise materially prejudicial in some other manner: *Huang v. Silvercorp Metals Inc.*, 2016 BCSC 278 at para. 59 [*Huang*] citing *Carr v. Cheng*, 2007 BCSC 997.

[24] In *Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Congress*, 1999 CanLII 5860 (BCSC), Justice Romilly discussed the principles that govern the application of Rules 9-5(1)(b) and 9-5(1)(c):

[47] Irrelevancy and embarrassment are both established when pleadings are so confusing that it is difficult to understand what is being pleaded: *Gittings v. Caneco Audio-Publishers Inc.* (1987), 1987 CanLII 2561 (BC SC), 17 B.C.L.R. (2d) 38 (B.C.S.C.). An "embarrassing" and "scandalous" pleading is one that is so irrelevant that it will involve the parties in useless expense and will prejudice the trial of the action by involving them in a dispute apart from the issues: *Keddie v. Dumas Hotels Ltd.* (1985), 1985 CanLII 417 (BC CA), 62 B.C.L.R. 145 at 147 (B.C.C.A.). An allegation which is scandalous will not be struck if it is relevant to the proceedings. It will only be struck if irrelevant as well as scandalous: *College of Dental Surgeons of B.C. v. Cleland* (1968), 1968 CanLII 1008 (BC CA), 66 W.W.R. 499 (B.C.C.A.). A

pleading is “unnecessary” or “vexatious” if it does not go to establishing the plaintiff’s cause of action or does not advance any claim known in law: *Strauts v. Harrigan*, 1992 CanLII 595 (BC SC), [1992] B.C.J. No. 86 (Q.L.) (B.C.S.C.). A pleading that is superfluous will not be struck out if it is not necessarily unnecessary or otherwise objectionable: *Lutz v. Canadian Puget Sound Lumber and Timber Co.* (1920), 28 B.C.R 39 (C.A.). A pleading is “frivolous” if it is obviously unsustainable, not in the sense that it lacks an evidentiary basis, but because of the doctrine of estoppel: *Chrisgian v. B.C. Rail Ltd. et al.* (6 July 1992), Prince George Registry 20714 (B.C.S.C.).

[25] In *Canadian Federation of Students v. Simon Fraser Student Society*, 2010 BCSC 1816 at para. 40, Justice Grauer (then of this Court) stated that the considerations under Rule 9-5(1)(c) also encompass a pleading that is made for an improper purpose, such as to harass and oppress the other parties, as opposed to raising a *bona fide* defence.

[26] The “plain and obvious” standard applies to all branches of Rule 9-5: *British Columbia (Director of Civil Forfeiture) v. Lam*, 2023 BCSC 159 at para. 20; *Huang* at para. 20.

[27] Applications brought under Rule 9-5(1)(b) and 9-5(1)(c) are discretionary and determined by contextual and factual considerations: *FORCOMP Forestry Consulting Ltd. v. British Columbia*, 2021 BCCA 465, leave to SCC ref’d, 40051 (30 June 2022), at para. 15; *Lover-Peace v. Erickson*, 2026 BCCA 53 at para. 17.

[28] Pleadings are to be read generously and as a whole: *Lee v. G.Y. Lee & Associates Ltd.*, 2014 BCCA 400 at para. 14.

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[29] Applying the above principles, but for a narrow exception, I am not persuaded that it is plain and obvious that the pleadings in the RTCC are unnecessary, scandalous, frivolous, vexatious, prejudicial, or embarrassing.

[30] A key aspect of the defence advanced by the respondents in the RTCC is the allegation that while Mr. Isachsen was appointed as sole director and officer of the Companies, Mr. Johansson maintained ultimate control over the Companies and their assets. The respondents allege that the financial mismanagement and tax

problems complained of existed long before, and continued during, Mr. Isachsen's involvement. The allegation of financial mismanagement includes Mr. Johansson's longstanding practice of evading taxes.

[31] The respondents also allege that while Mr. Isachsen took steps to attempt to remedy the situation, his efforts were "stymied" by Mr. Johansson, including by not being forthright and deliberately providing incorrect or false information; for example, as alleged in paras. 80-90 of the RTCC regarding whether Carlton Sweden owned shares in Carlton which had tax implications.

[32] The plaintiffs allege serious misconduct by the respondents. In defence, the respondents allege that it was Mr. Johansson's own serious misconduct that caused the losses claimed. In this context, the pleadings in the RTCC are generally responsive to the claim. In my view, the allegations regarding Mr. Johansson's mismanagement of the Companies, tax evasion practices, and "deception" of Mr. Isachsen and others during the material time are relevant and material to the respondents' defence.

[33] Although more care could have been taken in articulating the pleadings, I am not persuaded, in general, that the allegations in the RTCC are a gratuitous attack on Mr. Johansson's reputation as argued by the applicants.

[34] Further, I agree with the respondents that although the allegations of failure to deposit, declare and pay taxes on cash rental payments have been struck from the Amended Claim, it does not render the response pleadings irrelevant or superfluous. The respondents' allegations that Mr. Johansson collected rent payments in cash and failed to account for those payments remain relevant and material to the defence in that they support the contention that Mr. Johansson engaged in improper accounting to avoid paying taxes.

[35] Similarly, in my view, the allegations in paras. 109-119 of the RTCC are relevant and material to the defence in that they relate to Mr. Johansson's control over the Companies and their assets after Mr. Isachsen became director and officer.

[36] The applicants argue that the use of words such as “tax evasion”, “deception” and “illegality” in the RTCC is offensive. Relying on *British Columbia Milk Marketing Board v. Bari Cheese Ltd.*, 1992 CanLII 1781 (BCSC), they submit that even if the Court does not strike the impugned portions of the RTCC, the respondents should be required to replace these terms with neutral language as these terms presume findings that have not been made.

[37] In the context of this case, I would not accede to the applicant’s request where the pleadings are relevant to the respondent’s *bona fide* defence. However, I would grant the applicant’s request with respect to a narrow point: To the extent that the pleadings in the RTCC make broad allegations that appear to encompass activities of the deceased that have no connection or relevance to the matters in issue, these portions will be struck with leave to amend.

[38] I am referring to the following portions which contain broad allegations regarding activities and practices of the deceased, for example: that he was “engaged in illegality” and “bad acts...for decades” (para. 7); that he had “long been...intent on avoiding taxes” (para. 10); and that he had engaged in “lifelong efforts to avoid paying taxes” (para. 17).

[39] While the respondents claim that the deceased caused the financial and tax problems that are now the subject of the plaintiffs’ complaints including through long-term mismanagement of the Companies and evading taxes, the sweeping language used in the pleadings appear to suggest that there are other forms of “illegal” activities and “bad acts”, the nature and scope of which and their relevance to the matters in issue, are unclear. Further, the use of the terms “decades” and “lifelong” obscures the time period over which the relevant tax evasion and / or other misconduct are alleged to have taken place.

[40] To this extent, the pleadings are confusing, such that it is difficult to understand whether additional misconduct other than tax evasion is being alleged. Further, the pleadings appear to encompass allegations that may be so disconnected in time, such that they are irrelevant and will create prejudice by

involving the parties in a dispute apart from the issues. For this reason, I grant the application to the limited extent of striking the above-mentioned portions of paras. 7, 10, and 17 of the RTCC, with leave to the respondents to amend these paragraphs by April 15, 2026 inclusive. The purpose of the amendment is to provide the respondents with an opportunity to clarify the nature and scope of their allegations against the deceased.

Costs

[41] As success on the application is divided, each party will bear their own costs.

“Laurie J.”