IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Royal Bank of Canada v. MacIntyre,*
2026 BCSC 587

Date: 20260402
Docket: S253345
Registry: Vancouver

2026 BCSC 587 (CanLII)

Between:

Royal Bank of Canada

Plaintiff

And

Keith Robert MacIntyre and 2221837 Alberta Inc.

Defendant

And

His Majesty the King in right of the Province of British Columbia and Attorney General of Canada

Third Party(ies)

And

Royal Bank of Canada

Defendant(s) by Counterclaim

- and -

Docket: S255082
Registry: Vancouver

Between:

Business Development Bank of Canada

Plaintiff

And

Keith Robert MacIntyre and Big Bear Software Inc.

Defendants

And

His Majesty the King in right of the Province of British Columbia and Attorney General of Canada

Third Party

Business Development Bank of Canada

Defendant by Counterclaim

- and -

Docket: S258802
Registry: Vancouver

Between:

Keith Robert MacIntyre and Big Bear Software Inc.

Plaintiffs

And

Royal Bank of Canada, His Majesty the King in the Right of Province of British Columbia and Attorney General of Canada

Defendants

Before: The Honourable Justice Fowler

Reasons for Judgment

Counsel for Royal Bank of Canada:	E.A. Hrycan
Keith Robert MacIntyre, appearing in person and as representative for 2221837 Alberta Inc. and Big Bear Software Inc.:	K.R. MacIntyre
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Place and Dates of Hearing:	Vancouver, B.C. January 15 and 16, 2026
Place and Date of Judgment:	Vancouver, B.C. April 2, 2026

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INTRODUCTION

[1] These reasons for judgment address applications by two third parties, Attorney General of Canada ("AGC") and His Majesty the King in Right of the Province of British Columbia (the "Province"), to strike or set aside third party notices filed by the defendants, Keith MacIntyre ("MacIntyre") and two of his companies, in two separate but related civil claims brought by two banks seeking repayment of debts owed by MacIntyre and his companies.

[2] In addition, I am dealing with an application by AGC and the Province to strike a notice of civil claim filed by MacIntyre and one of his companies, in which he seeks very similar relief as he is seeking in the third party notices.

[3] The underlying claims brought by the Royal Bank ("RBC") and the Business Development Bank of Canada ("BDC") against MacIntyre are actions in debt for the recovery of funds dispersed to MacIntyre pursuant to multiple loan agreements.

[4] To assist in understanding the applications I will start these reasons with a chronology of the related actions.

CHRONOLOGY OF PLEADINGS AND APPLICATIONS

COURT FILE NO. 253345 – RBC NOCC

[5] On May 2, 2025 RBC filed a notice of civil claim ("RBC NOCC") against MacIntyre and 2221837 Alberta Inc. claiming that the defendants are jointly and severally indebted to RBC in the amount of $21,266.06 pursuant to a Business Operating Line of Credit Agreement (the "Line of Credit") and indebted in the amount of $17,544.71 pursuant to a Visa cardholder agreement ("Visa"). Both amounts were due on demand, and the plaintiff alleges that they have made the demand under both agreements and neither defendant has paid.

[6] On May 29, 2025, MacIntyre and 2221837 Alberta Inc. filed a response to civil claim (RTCC), as well as a counterclaim against RBC and Fulton and Company Law Corporation ("Fulton"). Fulton, who are counsel for RBC, appears to have been improperly added as a party to the counterclaim.

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[7] Both the RTCC and counterclaim allege that RBC engaged in predatory lending practices and relied on faulty algorithms for approving credit limits. MacIntyre also pleads additional facts about the economic duress he suffered because of "government restrictions and lockdowns during the period of March 2020 and beyond." MacIntyre also pleads that he had provided expert knowledge and experience to the provincial health officer, Dr. Bonnie Henry, that demonstrates the restrictions and lockdowns that caused him economic duress were unnecessary and unreasonable.

[8] MacIntyre, but not 2221837 Alberta Inc., filed a third party notice ("RBC TPN") on May 29, 2025, naming the AGC and the Province. The third party notice erroneously states that it has been filed by RBC. The defendant, MacIntyre, is seeking forgiveness of all personal and business debts owed to RBC, reinstatement of his RBC Mastercard and reinstatement of his airline points on his RBC Visa. He was also seeking "relief in the amount of $5,000,000 by the Province" and "relief in the amount of $5,000,000 by AGC."

[9] I will address the substance of the third party claims in more detail when I set out the basis upon which the third parties, AGC and the Province, seek to have the notice struck or set aside.

[10] RBC filed their response to the counterclaim on June 16, 2025, pleading that all loan agreements are valid contracts and the defendants continue to be in breach of them. RBC denies that they are in breach of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, or that there are any facts pleaded in the counterclaim to support an action in negligence. RBC pleads that the counterclaim should be struck under R. 9-5 on the basis that it is frivolous, vexatious, an abuse of process and discloses no actionable wrong.

[11] On June 17, 2025, RBC filed a response to the third party notice. Since RBC is not a third party but is a defendant by counterclaim, it is not clear why RBC filed a response to the third party claim. Notwithstanding that they are not a third party, RBC denies they committed any of the acts or omissions alleged in the third party

notice, or that the defendants (should be defendant because only MacIntyre filed a third party notice) were under duress.

[12] On June 20, 2025, the Province filed a response to the third party notice, pleading that the third party notice was improperly brought because it does not fall under any of the bases upon which to bring a third party claim under R. 3-5(1), and otherwise that it is bound to fail. The Province pleads that it is not a party to either the Line of Credit agreement or the Visa agreement. The Province also pleads that the third party notice is an abuse of process because it is a collateral attack on the Province's response to Covid-19.

[13] Prior to filing a response to the third party notice AGC filed a notice of application on June 26, 2025, seeking to have the third party notice struck pursuant to R. 9-5(1) or set aside pursuant to R. 3-5(1) or 3-5(8).

[14] On July 18, 2025, the Province filed its application to have the third party notice struck or set aside.

[15] On July 28, 2025, MacIntyre filed responses to the applications of AGC and the Province in which he submits that the third party notice was properly brought and that it is not "plain and obvious" that his claims against AGC and the Province were bound to fail.

[16] MacIntyre filed an amended third party notice on December 31, 2025, ("Amended RBC TPN") seeking very different relief: indemnification for any amount adjudged to be payable by the defendants to RBC; general damages for loss of business revenue, livelihood and reputation; and special damages for costs incurred due to regulatory compliance and mitigation.

COURT FILE NO. 255082 – BDC NOCC

[17] On July 7, 2025, the BDC filed a Notice of Civil Claim ("BDC NOCC") against MacIntyre and Big Bear Software Inc. ("Big Bear") seeking judgment in the amount of $318,174.43 representing the amounts in default and indebted to BDC

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under nine loan agreements. BDC seeks interest based on the rate established by the terms of the different loan agreements. BDC claims against MacIntyre pursuant to guarantees executed by MacIntyre and attaching to each of the nine loans.

[18] On August 22, 2025, the defendant MacIntyre filed a counterclaim against BDC, in which MacIntyre seek damages for economic loss “including but not limited to the loss of their business, personal assets, and significant emotional, personal duress (depression, anxiety) and loss of enjoyment of life (decline in health, loss of relationships). In the counterclaim, the defendant also seek dismissal of BDC’s claim against him.

[19] On August 25, 2025, MacIntyre and Big Bear filed a RTCC. In the RTCC the defendants plead that the loans advanced by BDC were unconscionable, that BDC was negligent in approving the loans, the loans constituted loan-cycling whereby BDC was approving loans to Big Bear that they knew were being used to pay down other BDC loans.

[20] After filing the RTCC, also on August 25, 2025, both defendants MacIntyre and Big Bear filed another counterclaim against BDC, that is identical to the counterclaim filed by MacIntyre alone on August 22, 2025. Although the counterclaim is filed by both defendants, the relief sought refers to the defendant, singular, and MacIntyre’s personal losses, and not any corporate losses.

[21] In the counterclaim, the defendants claim that the loans provided by BDC were unconscionable as BDC knew the defendant, singular, was in a state of financial distress. In addition, it is claimed that BDC was negligent in approving loans to BDC.

[22] On September 10, 2025, BDC filed a response to the counterclaim in which it pleads that the loans were not unconscionable transactions, that the defendants were always free to reject loan offers and the relationship between BDC and the defendants was a purely commercial relationship of creditor and debtor from which no duty of care or fiduciary duty arose.

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[23] On October 6, 2025, MacIntyre and Big Bear filed a Third Party Notice ("BDC TPN") again naming AGC and the Province. MacIntyre seeks damages for his economic losses from the loss of two businesses, loss of personal assets, emotional and personal duress and loss of enjoyment of life. Big Bear seeks damages for economic losses, including the loss of employees and contracts and the inability to pay debts. The defendants also seek contribution or indemnity from the third parties for any liability to BDC.

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[24] I will address the substance of the third party claims in more detail when I set out the basis upon which the third parties, AGC and the Province, seek to have the notice struck or set aside.

[25] On November 13, 2025, the Province filed a response to the third party notice, in which they plead, as they did in response to the third party notice filed in the RBC NOCC, that the third party notice was improperly brought, was bound to fail and was an abuse of process.

[26] On November 21, 2025, AGC filed a notice of application seeking to set aside the third party notice pursuant to Rules 3-5(1) and 3-5(8) on the basis that it does not meet the legal requirements of a third party claim, and seeking to strike the third party claim pursuant to R. 9-5(1)(a) as it does not disclose a reasonable cause of action and pursuant to R. 9-5(1)(b) on the basis that the third party notice is frivolous and vexatious.

[27] On November 27, 2025, the Province filed an application very similar to the AGC application described above, also seeking to set aside or strike the third party notice.

<u>THIRD PARTY NOTICES</u>

Amended RBC TPN – Material Facts

[28] The Statement of Facts in the Amended RBC TPN are as follows:

> 1. The Defendant Keith Robert MacIntyre, was placed under extreme economic duress because of the government restrictions and

lockdowns during the period of March 2020 implemented by the Defendant the Attorney General of Canada and His Majesty the King in right of the Province of British Columbia, and beyond. As a direct result of these restrictions, the Defendant was thus unable to generate the expected revenue in the business 2221837 Alberta Inc. (operating as the Big Bear Innovation Centre Coworking space) of which the Defendant, Royal Bank of Canada, was fully aware.

2. The Third Parties (The Crown) implemented unreasonable and unscientific pandemic restrictions beginning in March 2020 which directly destroyed the Defendant's ability to service the debts claimed by the Plaintiff.
3. The Third Parties had a duty of care to evaluate alternatives other than the severe restrictions placed on individuals and business and failed to do so
4. The Defendant Keith Robert MacIntyre, presented his data and findings to Mel Krajden of the BC CDC on multiple occasions in 2020, where Mel Krajden agreed with his findings, passed this information to Dr. Bonnie Henry, effectively triggering a duty to reconsider, but the PHO failed to reject, delay, or confirm.
5. His Majesty the King in right of the Province of British Columbia, through the public health authority implemented unreasonable and unscientific pandemic restrictions beginning in March 2020 and beyond harming the Defendant's ability to generate revenue in their Coworking space business.
6. The Third Parties breached this statutory duty by failing to issue the required written decision or conduct the mandatory review. Instead, the Third Parties knowingly continued to rely on falsified or "unscientific" modeling to maintain severe restrictions. This refusal to exercise a mandatory
7. statutory power, despite acknowledging receipt of the contradictory data, constitutes Misfeasance in Public Office and was done for the improper collateral purpose of political expediency rather than public safety.
8. His Majesty the King in right of the Province of British Columbia, through the public health authority had a duty to explore alternatives when presented by pandemic simulation modelling experts such as Keith Robert MacIntyre.
9. His Majesty the King in right of the Province of British Columbia, through the public health authority, and the Attorney General of Canada through the public health authority, did not have the knowledge and relied on improper data and did not follow well-defined pandemic plans in
10. March 2020 and beyond causing irreparable harm to the Defendant's business and personal life.
11. The Attorney General of Canada implemented measures such as the CEWS, CERS, and CEBA programs which predictably increased

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inflation and interest rates, rendering the Plaintiff's variable rate debt unmanageable.

12. David Redman was the head of Emergency Management of Alberta and helped prepare pandemic emergency plans. The Third Parties ignored these well-established pandemic plans.
13. His Majesty the King in right of the Province of British Columbia, through the public health authority, and the Attorney General of Canada through the public health authority had a duty of
14. care to evaluate alternatives other than the severe restrictions placed on individuals and business and did not do so.
15. The Attorney General of Canada through the Prime Minister of Canada implemented measures such as the CEWS, CERS, and CEBA programs which predictably increased inflation and eventually rapidly increased interest rates which made the Plaintiff's debt load even more unmanageable.
16. The Attorney General of Canada through the Prime Minister of Canada when implementing the CERS program did not account for highly affected business such as 2221837 Alberta Inc's
17. Coworking business that begin operating in March 2020, thus making it impossible for the business to qualify for rental subsidies.
18. The spending programs resulted in high inflation and higher interest rates than would have occurred normally.
19. The Third Parties exercised their statutory powers for an improper collateral purpose. Specifically, the Third Parties tailored the timing and severity of public health restrictions to align with political electoral timelines (the 2020 Provincial Election) rather than relying solely on objective epidemiological data. This constitutes misfeasance in Public Office.
20. The Third Parties, through their senior officials, implemented vaccine mandates for public spaces based on the material misrepresentation that vaccination prevented transmission. The Third Parties knew or ought to have known this premise was false. This conduct was arbitrary, coercive, and violated the principles of fundamental justice under Section 7 of the *Charter*, directly causing the financial destruction of the Defendant's business.
21. The Attorney General of Canada through the Prime Minister of Canada, unreasonably restricted travel via aircraft for unvaccinated individuals, thus preventing the Plaintiff, Keith MacIntyre from growing his other business, Big Bear Software.
22. The actions of the Third Parties in this case caused severe duress to Keith MacIntyre, whereby he was unable to make sound business decisions spirally his business and personal life into disarray and causing him to be unable to meet financial commitment.
23. His Majesty the King in right of the Province of British Columbia, through the public health authority, and the Attorney General of

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Canada through the public health authority using lockdowns and restrictions constituted cruel and unusual punishment to the Plaintiff, Keith MacIntyre.

BDC TPN – Material Facts

[29] The Statement of Facts in the BDC TPN are as follows:

1. Keith MacIntyre is the President and sole shareholder of Big Bear Software Inc.
2. Big Bear Software was a rapidly growing business between 2017 and 2019 with increasing revenues and profits.
3. The Defendant Keith Robert MacIntyre was placed under extreme economic and personal duress because of the provincial and federal government restrictions and lockdowns during the Period March 2020 and continuing to October 2022, including but not limited to loss of businesses, loss of personal assets, severe depression and anxiety, loss of enjoyment of life (decline in health, loss of relationships)
4. The Defendant Big Bear Software was placed under extreme economic duress causing significant downsizing due to the provincial and federal government restrictions and lockdowns during the Period March 2020 and continuing to October 2022.
5. Keith MacIntyre was also the President and sole shareholder of 2221837 Alberta Inc. doing business as the Big Bear Innovation Centre which was a coworking space opened in February of 2020 on Westbank First Nation, opened in part for office space for Big Bear Software's growing business but also to build community in Westbank and West Kelowna.
6. 2221837 Alberta Inc. was unable to generate significant revenue to operate the business for the 5 years duration of the lease due to the provincial and federal government restrictions and lockdowns during the Period March 2020 and continuing to October 2022, causing further economic and personal duress to the defendant Keith MacIntyre.
7. Keith MacIntyre has expert level knowledge of pandemic modelling and simulation from a previous career developing simulations and assisting the US CDC with pandemic exercises in 2009.
8. Keith MacIntyre was made aware in September 2020 of an email from Dr. Mel Krajden of the BC Centre for Disease Control of the unreliable PCR tests being used to make pandemic decisions in the province of British Columbia and Canada
9. Keith MacIntyre communicated with Dr. Krajden twice via telephone and several times via email where discussions were had on the ineffectiveness of pandemic restrictions and the harm caused by pandemic restrictions, including a detailed data analysis

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of the pandemic to date which was emailed to Dr. Krajden, to which that Mr. MacIntyre's analysis was correct and that he disagreed with the severity of the restrictions.

10. Dr. Krajden passed on Mr. MacIntyre's detailed analysis to Dr. Bonnie Henry, BC Public Health Officer, to which she acknowledged receipt of the analysis.
11. Section 43 of the BC Health Act requires the health officer to reconsider and order if the person has additional relevant information or has a proposal that was not presented when the order was issued, and is required to respond in writing to reject, delay, or confirm the request, which never occurred.
12. The modelling predictions used in March 2020 by the Public Health Officer, Dr. Henry, predicting 326,000
13. Canadians would die from unmitigated COVID in 2020 were easily verifiable as false claims by someone with expert level pandemic modelling knowledge.
14. The Public Health Officer in British Columbia, Dr. Henry did not have the knowledge or training to evaluate the data and made decisions that harmed the defendants, including, but not limited to, harsh restrictions in the Interior of British Columbia.
15. The Public Health Officer continued to rely on faulty modelling despite the modelling proving to be fault throughout the course of the pandemic.
16. The Public Health Officer in British Columbia hired an inexperienced zoologist, Dr. Sarah Otto to create pandemic models, resulting in further faulty analyses.
17. The Province of British Columbia and the Government of Canada ignored well documented CDC pandemic plans that stated large scale lockdowns and restrictions are not effective and cause an unreasonable amount of harm on society while having only a modest effect on disease spread.
18. The Premier of British Columbia, John Horgan and the Health Minister, Adrian Dix acted beyond the scope in excess of their legal power or authority (ultra vires) and influenced the decisions of the Public Health Officer, Dr. Bonnie Henry, including but not limited to mandates implemented immediately following the October election and vaccine mandates and vaccine passports.
19. The Public Health Officer and the Province of British Columbia engaged in fear based marketing tactics to create duress throughout the province in order to enforce the restrictions.
20. The Government of Canada implemented programs such as the CEWS, CERS and CEBA programs which predictably increased inflation and increased interest rates which made the Plaintiff's debt load even more unmanageable.

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21. The Business Development Bank is a Crown Corporation wholly owned by the Government of Canada.
22. The Government of Canada implemented the HASCAP loan program which the BOC administered and banks distributed, the loan programs were 100% guaranteed by the BOC with no risks to the banks. This demonstrates ultra vires by the Government of Canada.
23. The restrictions beginning in March 2020 and last until October 2022 resulted in a financial crisis of unprecedented proportions.
24. The Government of Canada provided capital injections to BOC and gave it a clear mandate to support businesses and therefore was not acting independently, and had full awareness that many of the loans they were providing could not be paid.
25. The Government of Canada exerted undue influence on the BOC to provide bad loans to businesses.
26. The Government of Canada acted unconscionably by mandating BOC to provide credit and liquidity options which resulted in bad business practices by the BOC.
27. The Province of British Columbia acted unconscionably in restricting Mr. MacIntyre and his businesses.
28. The Government of Canada acted unconscionably in restricting Mr. MacIntyre and his businesses.
29. The Government of Canada restricted Mr. MacIntyre's Charter protected rights of travel by not allowing unvaccinated individuals to travel by airplane within Canada.
30. The restrictions put in place during the pandemic by the Government of Canada and the Province of British Columbia constituted cruel and unusual punishment to the defendant Mr. MacIntyre.
31. The Government of Canada and the Province of British Columbia did not exercise duty of care and exceed their authority by not exercising reasonable care and caution in their actions or decisions and their decisions did not prevent harm or injury to others, but instead caused harm and injury.

Summary of Third Party Notices

[30] Both the Amended RBC TPN and the BDC TPN make similar claims in the statement of facts: the defendants, McIntyre and his companies, were placed under “extreme economic duress” because of the provincial and federal government restrictions and lockdowns during the period commencing March 2020 and continuing to October 2022.

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[31] MacIntyre pleads that he has “expert level knowledge of pandemic modelling and simulation” and that he had communicated the results of his analysis, being that pandemic restrictions were ineffective and causing harm, to the BC Centre for Disease Control and the BC Public Health Officer. MacIntyre pleads as a fact that the third parties breached their statutory duty by failing to issue a decision or conduct a mandatory review based on MacIntyre’s data and analysis.

[32] McIntyre further pleads that the Province breached the standard of care they owed him by relying on improper data and by not following well-defined pandemic plans, thereby causing irreparable harm to him and to his businesses.

[33] In respect of AGC, McIntyre pleads that the government implemented financial relief programs that predictably increased inflation and interest rates which made MacIntyre’s debt load more unmanageable.

[34] MacIntyre pleads that the Province and AGC acted unconscionably “in restricting MacIntyre and his businesses”, including by restricting air travel for unvaccinated individuals. Furthermore, the lockdowns and restrictions “constituted cruel and unusual punishment” to MacIntyre.

[35] In respect of the BDC TPN, MacIntyre claims that AGC provided capital to BDC and then unduly influenced BDC to “provide bad loans to businesses.” MacIntyre pleads that such conduct by AGC was unconscionable.

[36] MacIntyre also pleads that the Province and AGC “exercised their statutory powers for an improper collateral purpose” – by “tailoring the timing and severity of public health restrictions to align with political electoral timelines (the 2020 Provincial Election) rather than relying solely on objective epidemiological data.” This MacIntyre states “constitutes misfeasance in Public Office.”

[37] The legal bases asserted MacIntyre for his claims against AGC and the Province include:

a. Negligence;

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b. Nuisance;

c. Misfeasance in Public Office;

d. Breaches of the *British Columbia Public Health Act*, S.B.C. 2008, c. 28 [*PHA*];

e. Breaches of ss. 6, 7 and 12 of the *Charter*; and

f. Breaches of the duty of care.

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Notices of Application

[38] As set out in the chronology, both AGC and the Province have filed applications to strike out or set aside the BDC TPN and the Amended RBC TPN.

[39] Although there are four separate applications before the Court (applications by two third parties to set aside or strike two third party notices), the submissions of AGC and the Province overlap significantly.

[40] In summary, AGC and the Province submit that the third party notices should be set aside pursuant to R. 3-5(8) on the basis that the third party notices are improper in that the claims and relief sought do not fall into any of the enumerated categories for third party claims set out in R. 3-5(1).

[41] In the alternative, AGC and the Province submit that the third party notices should be struck pursuant to R. 9-5(1), without leave to amend, on the basis that they: disclose no reasonable cause of action; are unnecessary, scandalous, frivolous and vexatious; may prejudice or delay the fair trial of the proceeding; and are an abuse of process.

Third Party Rule

[42] Rule 3-5(1) states:

> (1) A party against whom relief is sought in an action may, if that party is not a plaintiff in the action, pursue a third party claim against any person if the party alleges that

> (a) the party is entitled to contribution or indemnity from the person in relation to any relief that is being sought against the party in the action,
>
> (b) the party is entitled to relief against the person and that relief relates to or is connected with the subject matter of the action, or
>
> (c) a question or issue between the party and the person
>
> (i) is substantially the same as a question or issue that relates to or is connected with
>
> (A) relief claimed in the action, or
>
> (B) the subject matter of the action, and
>
> (ii) should properly be determined in the action.

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[43] Rule 3-5(8) states:

> (8) At any time, on application, the court may set aside a third party notice.

[44] A third-party notice may be set aside at anytime pursuant to R. 3-5(8). In *McNaughton v. Baker*, 25 B.C.L.R. (2d) 17, 1988 CanLII 3036 (B.C.C.A.), Justice McLachlin in considering the equivalent provision in the former *Rules* stated:

> [17] When is it appropriate that a third party notice be struck out? First, it can be struck out on the basis that the claim does not fall within one of the categories listed under [the predecessor of *Supreme Court Civil Rule* 3-5(1)], for example, that it is neither a claim for contribution or indemnity nor connected with the original action. That ground is not applicable here; the claim is for contribution and indemnity and is intimately related to [the] original action.
>
> [18] Second, <u>a third party notice can be struck out on the same basis that a statement of claim may be struck out under [the predecessor of *Supreme Court Civil Rule* 9-5(1)] - that it discloses no reasonable cause of action, or is frivolous and vexatious, may prejudice or embarrass the hearing of the appeal, or is otherwise an abuse of the process of the court.</u> […]
>
> [Emphasis added.]

[45] It has been held that this approach applies to the current Rules: *Ari v. Insurance Corporation of British Columbia*, 2021 BCCA 180 at paras. 67–68.

[46] The jurisdiction to grant leave to file a third-party notice and the test for setting aside a third party claim significantly overlap.

[47] I summarized some of the legal principles applicable to third party claims in *Sidhu v. Brar*, 2025 BCSC 1592:

> [53] In *Tyson Creek Hydro Corporation v. Kerr Wood Leidal Associates Limited*, 2014 BCCA 17, Justice Low adopted as an accurate and complete statement of the law the chambers judge's summary of the legal principles applicable to a court's exercise of discretion to grant leave to file a third party notice:
>
> > **PURPOSE OF THIRD PARTY PROCEEDINGS**
> >
> > [39] In *Lui v. West Granville Manor Ltd* (1985), 1985 CanLII 155 (BC CA), 61 B.C.L.R. 315 at 327,18 D.L.R. (4th) 391 (C.A.) [*Lui*], which was decided under the 1976 Rules, Lambert J.A. stated that the purpose of third party proceedings was to avoid the problem of having different results on the same issue between the same parties and to avoid a multiplicity of proceedings.
> >
> > [40] In *MacNaughton*, McLachlin J.A. explained, at 21, the purpose of third party proceedings as follows:
> >
> > > Third party pleadings function as a special type of statement of claim. Indeed, the claim they embody could be brought by separate action. But to avoid a multiplicity of proceedings, the rules permit the claim to be made in the action, which has been commenced against the defendant. The object of permitting third party proceedings to be tried with the main action is to provide a single I procedure for the resolution of related questions, issues or remedies, in order I to avoid multiple actions and inconsistent findings, to provide a mechanism I for the third party to defend the Plaintiffs claim, and to ensure the third party claim is decided before a defendant is called upon to pay the full amount of any judgment. The avoidance of a multiplicity of proceedings is fundamental to our rules of civil procedure. This has been the case since the reforms effected by the Judicature Acts in the nineteenth century. As Cotton L.J. stated in *Searle v. Choat* (1884), 25 Ch. D. 727: "the whole tenor of the *Judicature Acts* is to require all proceedings as far as possible to be taken in one action".
> >
> > **EXERCISE OF DISCRETION**
> >
> > [41] In *Lui*, Lambert J.A. noted that the court is given a wide discretion under Rule 22(4), to strike out third party proceedings. He indicated at 328 that there were a number of factors that should be considered including:
> >
> > > ...What is the fair thing to do? Who suffers prejudice if the discretion is exercised? How much prejudice? Who suffers prejudice if the discretion is not exercised? How much prejudice? Have the parties acted properly and reasonably in their own interests? If a party has not acted properly and reasonably, should he be relieved from the consequences of

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> his own behaviour? Is there another course available to one or other of the parties? Where does the balance of convenience lie? This list is illustrative, but not exhaustive, of the questions that should be asked with respect to the parties before the court. But part of the purpose of the Rule is to avoid multiplicity of proceedings for the benefit of other litigants, so that congestion in the courts is avoided. So it is proper to ask questions in that area as well.

[42] In *Clayton Systems 2001 Ltd. v. Quizno's Canada Corp.*, 2003 BCSC 1573 at para. 9, 27 B.C.L.R. (4th) 247 [*Clayton Systems*], which was decided under the Amended Rule, Allan J. held that in determining the application the court should consider the following factors in determining whether or not to exercise its discretion to grant leave:

> (a) prejudice to the parties;
>
> (b) expiration of limitation period;
>
> (c) the merits of the proposed claim;
>
> (d) any delay in proceedings; and
>
> (e) the timeliness of the application.

[43] In *Scott Management* at para. 90, the court framed the question on an application for leave to file a third notice in this fashion:

> [90] The fundamental question on the applications should have been whether greater injustice and inconvenience would arise from allowing the contribution claim to continue as a third party proceeding, or from striking it and leaving it to be pursued in a separate future action. The chambers judge erred in failing to address that question. Had he done so, in my view he would have been compelled to exercise his discretion in favour of the former course, as the better of two unpalatable options.

Analysis

[48] In considering whether there is a valid claim for contribution or indemnity I must assume the facts pleaded are true and determine whether it is plain and obvious that the claim cannot succeed: *Nolting v. Interior Health Authority*, 2017 BCSC 438 at paras. 14–15.

[49] The underlying claims brought by RBC and BDC are contractual claims for the repayment of debt by MacIntyre personally as a party to loan agreements (RBC) or pursuant to loan guarantees (BDC).

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[50] Neither AGC nor the Province is a party to any of the contractual agreements underlying the claims for repayment of debt.

[51] There is no basis set out in either the RBC TPN or the BDC TPN to conclude that MacIntyre has set out sufficient material facts to support any claim for contribution or indemnity under R. 3-5(1)(a), beyond vague assertions that AGC influenced BDC to provide bad loans or that AGC acted unconscionably in restricting MacIntyre's businesses during the Covid pandemic.

[52] In respect of the Province, MacIntyre's third party claims are simply bare assertions that his businesses were placed under duress by lockdowns and restrictions. There are no facts pleaded to explain how the Province caused or contributed to either RBC's or BDC's losses such that MacIntyre is entitled to either contribution or indemnity.

[53] I am also not satisfied that the RBC TPN or the BDC TPN plead sufficient material facts to support a third party claim under R. 3-5(1)(b), being that MacIntyre or his companies are entitled to relief against AGC or the Province because the relief claimed relates to or is connected with the subject matter of the debt claims.

[54] It is entirely unclear from the third party claims how the conduct alleged against AGC or the Province is connected to RBC's and BDC's debt claims against MacIntyre and his companies. Neither AGC nor the Province are parties to the loans.

[55] Taken at their very best, the RBC TPN and the BDC TPN include claims that the response of AGC and the Province to the pandemic created challenging economic circumstances for MacIntyre and his businesses. But it is entirely unclear from the third party notices how the conduct alleged against AGC or the Province is connected to the debt claims of RBC or BDC.

[56] The conduct alleged against AGC and the Province is extremely wide ranging and the relief sought potentially vastly exceeds the claims by either RBC or BDC for

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repayment of debt. A connection between the third party claims and the underlying claims of RBC and BDC is not established.

[57] The factual and legal basis of the underlying claims are narrow and entirely distinct from the allegations in the third party notices.

[58] I am therefore not satisfied that either the RBC TPN or the BDC TPN is a proper claim under R. 3-5(1)(c).

[59] In addition, I must consider the prejudice to RBC and BDC in permitting the third party claims to continue, given the overwhelming extent to which MacIntyre's third party claims have expanded the underlying debt claims.

[60] The RBC NOCC and the BDC NOCC are straightforward claims in debt. The RTCC's filed by the defendants do not dispute that the loans were made by the plaintiffs and that the debt is outstanding.

[61] The third party claims massively expand the scope of the litigation to include *Charter* claims, misfeasance in public officer and far-reaching allegations about the conduct of the AGC and the Province in managing the pandemic.

Conclusion

[62] The RBC TPN and the BDC TPN do not meet the requirements for valid third party claims under R. 3-5(1).

[63] In addition, the prejudice to RBC and BDC in permitting these third party claims to continue is overwhelming. The third party claims expand straightforward debt claims into far-reaching inquiries into the federal and provincial governments' response to the Covid pandemic, seeking damages for misfeasance in public office, negligence, nuisance as well as damages for breaches of *Charter* rights.

[64] The RBC TPN and the BDC TPN are set aside, without leave to amend.

[65] Given my decision under R. 3-5(8), I do not need to consider whether the third party notice claims should be struck pursuant to R. 9-5(1).

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COURT FILE NO. 258802 – MACINTYRE NOCC

Introduction

[66] The final applications brought by AGC and the Province are applications to strike a NOCC filed by MacIntyre, which basically repeats the same allegations made in the RBC TPN and the BDC TPN.

Chronology

[67] On November 24, 2025, MacIntyre and Big Bear filed a NOCC against RBC, AGC and the Province (the "Government defendants"), making broad claims of malfeasance against the defendants and claiming negligence and breach of a duty of care by RBC; that loan agreements between RBC and the plaintiffs were unconscionable because the Government defendants shifted financial risk during the pandemic onto the plaintiffs while insulating the banking sector; that credit agreements were frustrated by government restrictions; that public health orders were *ultra vires* and illegal and the defendants enforced and profited from these orders; the Government defendants committed the tort of misfeasance in public office; and RBC was an agent of the government in administering pandemic loan programs making both parties jointly liable for resulting damages.

[68] In addition, MacIntyre claims that the Government defendants' actions violated his: rights to mobility under s. 6 of the *Charter* by restricting travel for unvaccinated individuals preventing him from earning a livelihood; rights to life, liberty and security of the person protected by s. 7 of the *Charter* by inflicting severe psychological distress and depriving MacIntyre of the means to sustain life; and right not to be subjected to any cruel and unusual treatment or punishment protected by s. 12 of the *Charter*, by inflicting mental pain and suffering through degrading treatment and financial ruin.

[69] MacIntyre seeks a declaration that credit agreements between the plaintiffs and RBC are void, unenforceable, or rescinded due to frustration, illegality and unconscionability. He also seeks general and special damages against all defendants, jointly and severally, and punitive and aggravated damages. In addition,

he seeks damages pursuant to s. 24(1) of the *Charter* for breaches of his rights under ss. 6,7 and 12 of the *Charter*.

[70] On December 17, 2025, the Province filed its RTCC confirming that the Province was not a party to any loan or credit card agreements with the plaintiffs and has no knowledge of them. Importantly, the Province identifies that it is involved in related claims with MacIntyre, Big Bear and 2221837 Alberta Inc. arising from the third party claims filed in the actions brought by RBC and BDC under file numbers 253345 and 255082, respectively.

[71] The Province opposes all the relief sought and responds that the claims are statute barred by the limitation period; the claims are bound to fail as the NOCC discloses no material facts to support any cause of action against the Province; the NOCC does not plead material facts that are capable of establishing breaches of ss. 6,7 and 12 of the *Charter*, or that any breaches were not reasonable limits in a free and democratic society; and finally the Province pleads statutory immunity under s. 92 of the *PHA*.

[72] On December 22, 2025 AGC filed a RTCC pleading that the claim fails to give rise to any causes of action: AGC denies that it owed the plaintiffs any duty of care or that it breached any duty of care; pleads that unconscionability relates to the contractual relationship between the plaintiffs and RBC, not AGC as AGC is not a party to those agreements; makes bare assertions of violations of *Charter* rights without specifying what if any government action or conduct could have given right to such breaches; makes bare assertions of misfeasance in public office; and finally pleads that RBC is not an agent of AGC.

[73] AGC also pleads that the claim in respect of the RBC loans has been brought outside of the limitation period.

[74] On December 23, 2025, AGC filed a notice of application seeking to strike the MacIntyre NOCC pursuant to R. 9-5(1) on the basis that it discloses no reasonable cause of action, is frivolous and vexatious and is otherwise an abuse of process.

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[75] On December 24, 2025, the Province brought a similar application to strike the MacIntyre NOCC, also pursuant to R. 9-5(1) and on the same basis, that the NOCC discloses no cause of action, is unnecessary, scandalous, frivolous or vexatious, and because it is an abuse of process.

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[76] On January 7, 2026, MacIntyre filed his response to the application filed by AGC to strike the MacIntyre NOCC. In their response, the plaintiffs simply assert that AGC has not met the heavy burden of proving that it is plain and obvious that the claims will fail. Furthermore, the plaintiffs submit that they have properly pleaded the elements of misfeasance in public office and that they have pleaded material facts to support a claim of a breach of s. 12 of the *Charter*. In response to the limitation defence the plaintiffs submit that their claims were not discoverable until the full extent of the business's inability to recover became clear and until the government covid restrictions were linked to the business failure of Big Bear.

[77] Also on January 7, 2026, MacIntyre filed his response to the application filed by the Province to strike the MacIntyre NOCC. The plaintiffs submit that their claims are not bound to fail, that they have pleaded the necessary material facts for all their claims and that statutory immunity is an affirmative defence that the Province must prove. The plaintiffs also argue that the requirements of R. 3-5(1) are met, despite that Rule applying to third party claims not notices of civil claim.

MacIntyre NOCC – Part 1: Statement of Facts

[78] The entirety of the facts pleaded by MacIntyre in the NOCC in support of his claims and the relief sought are as follows:

> 1. The Plaintiff, Keith Robert MacIntyre, is a businessman and the President and sole shareholder of the Plaintiff, Big Bear Software Inc. ("Big Bear"), and 2221837 Alberta Inc. ("Big Bear Innovation Centre").
>
> 2. The Plaintiff, Big Bear Software Inc., was a rapidly growing business between 2017 and 2019 with increasing revenues and profits.
>
> 3. Between 2020 and 2022, the Plaintiff Big Bear Software Inc. was induced to take on significant debt obligations, and incurred debts, specifically:
>
> > 1. A Canada Emergency Business Account (CEBA) loan in the amount of $60,000

2. A HASCAP loan in the amount of $250,000

3. RBC Business Line of Credit $66,552.16 and

4. RBC Credit Card $25,039.61

4. The Plaintiff Keith Robert MacIntyre was induced to personally guarantee these debts and incurred personal debts, including an RBC Line of Credit in the amount of $45,635.35 and Visa debt of $19,469.51, to sustain the businesses during the government-mandated closures and beyond during the subsequent debt spiral.

5. The restrictions and lockdowns beginning in March 2020 resulted in a financial crisis of unprecedented proportions. The Defendant Federal Government and Defendant RBC publicly reassured the business community that liquidity support and bailouts would be available to prevent mass bankruptcy.

6. While the Defendant Federal Government provided massive liquidity support and guarantees to the banking sector-effectively "bailing out" the Defendant RBC and protecting it from risk-no such bailouts were provided to small businesses like the Plaintiffs' when the restrictions caused their insolvency.

7. The Defendant Province's public health orders were made ultra vires (beyond legal authority). Specifically, the orders were effectively decided by the Cabinet politicians rather than the Public Health Officer independently, as required by the *Public Health Act*.

8. The Defendant Governments engaged in misfeasance by interfering in the regulatory and economic environment of the Plaintiffs' businesses for improper political purposes, knowing such interference would cause the Plaintiffs injury.

9. The Defendant, Royal Bank of Canada ("RBC"), is a chartered bank carrying on business in British Columbia and was at all material times the primary lender to the Plaintiffs.

10. The Defendants, His Majesty the King in right of the Province of British Columbia (the "Province") and the Attorney General of Canada (the "Federal Government"), implemented restrictions and lockdowns beginning in March 2020 which placed the Plaintiffs under extreme economic duress.

11. As a direct result of these restrictions, the Plaintiffs suffered significant downsizing, loss of business revenue, and loss of personal assets.

12. The Defendant RBC possessed full and specific knowledge of the restrictions imposed on the Plaintiffs' businesses by the Defendant Governments. RBC knew that these restrictions made the Plaintiffs' normal business operations illegal or impossible to perform.

13. The Federal Government implemented the CEBA and HASCAP loan programs to address the crisis caused by their restrictions.

14. The Defendant RBC acted as the agent and administrator for the Federal Government in issuing these CEBA and HASCAP loans.

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> 15. Despite knowing the Plaintiffs were having extreme difficulty operating due to government mandate, the Defendant RBC, acting in concert with the Federal Government, facilitated and encouraged the accumulation of further debt (including the CEBA/HASCAP loans, Credit Cards and Lines of Credit) rather than providing the necessary relief.
>
> 16. The Defendant Province, through the Public Health Officer, relied on faulty modeling predictions (including predicting 326,000 deaths) that were verifiable as false by experts, including the Plaintiff Keith MacIntyre who possesses expert-level knowledge of pandemic modeling.
>
> 17. The Plaintiff Keith MacIntyre communicated detailed data analysis disputing these models to Dr. Mel Krajden of the BC Centre for Disease Control in 2020, who communicated them to the Public Health Officer, Dr. Bonnie Henry. The Defendant Province ignored this "additional relevant information" and failed to reconsider its orders as required by Section 43 of the Public Health Act.
>
> 18. The Defendant Federal Government implemented programs (CEWS, CERS, CEBA) which predictably increased inflation and interest rates, making the Plaintiffs' debt load unmanageable.
>
> 19. The Defendant Federal Government acted unconscionably by mandating BOC and its agents (RBC) to provide credit options that resulted in predatory lending practices, lending without regard to the borrower's ability to repay in a restricted environment.
>
> 20. The actions of all Defendants jointly caused the Plaintiffs severe economic loss, including the loss of two businesses, and caused the Plaintiff Keith MacIntyre severe personal injury, including depression, anxiety, and loss of enjoyment of life.

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Legal Principles

[79] Supreme Court Rule 9-5(1) states:

> (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.
>
> [20] Pleadings will generally be struck out if they: (a) are unintelligible, confusing, and difficult to understand; (b) do not establish a cause of action

> and do not advance a claim known in law; or (c) are without substance in that they are groundless, fanciful, and trifle with the court's time: *Dempsey et al. v. Envision Credit Union et al.*, 2006 BCSC 750 at para. 17. Claims of exaggerated damages also do nothing to bolster the seriousness of the pleadings: *References re Charter of Rights and Freedom*, s. 52(1), 2017 FC 30 at para. 42.
>
> [21] As Justice Voith recognized in *Sahyoun v. Ho*, 2015 BCSC 392 at paras. 61–64, while the subrules of R. 9-5(1) address different concerns, there is also significant overlap among them. In the case of pleadings that are "so overwhelmed with difficulty that it is simply not possible [to] fully identify all of the specific inadequacies that exist, or to categorize those difficulties into the specific subparagraphs of R. 9-5(1)" the various provisions may apply together: *Simon v. Canada (Attorney General)*, 2017 BCSC 1438 at para. 53. While there is overlap in this case, I deal with each in turn.

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[80] As I am satisfied that the claim should be struck pursuant to R. 9-5(1)(a) I will only deal with this subrule.

No Reasonable Cause of Action

[81] A claim will be struck under R. 9-5(1)(a) if it is plan and obvious, assuming all the facts pleaded to be true, the claim has no reasonable prospect of success. The claim should be read as generously as possible.

[82] In *R. v. Imperial Tobacco*, 2011 SCC 42 the Supreme Court of Canada discussed the test for striking pleadings under the old BC rule, which is essentially the same as R. 9-5(1):

> [17] The parties agree on the test applicable on a motion to strike for not disclosing a reasonable cause of action under r. 19(24)(a) of the B.C. *Supreme Court Rules*. This Court has reiterated the test on many occasions. A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action: *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 S.C.R. 263, at para. 15; *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, at p. 980. Another way of putting the test is that the claim has no reasonable prospect of success. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial: see, generally, *Syl Apps Secure Treatment Centre v. B.D.*, 2007 SCC 38, [2007] 3 S.C.R. 83; *Odhavji Estate*; *Hunt*; *Attorney General of Canada v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735.
>
> [18] Although all agree on the test, the arguments before us revealed different conceptions about how it should be applied. It may therefore be useful to review the purpose of the test and its application.

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> [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] 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] 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.

[83] In addition, I am mindful of the admonition made clear by the Court of Appeal in *Aubichon v. Grafton*, 2022 BCCA 77:

> [26] Courts are required to be cautious when striking a claim and to "err on the side of permitting a novel but arguable claim to proceed to trial": *Imperial Tobacco* at para. 21. Generally, where there is a fit question to be tried, where the claim is not "certain to fail" or where there are serious questions of law, the matter should proceed to trial. See *Hunt* at 980; *Levy v. British Columbia* (*Crime Victim Assistance Program*), 2018 BCCA 36 at para. 32; [*FORCOMP*] at paras. 20–22.
>
> [Emphasis added.]

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[84] However, a plaintiff cannot just name the causes of action, they must clearly articulate the material facts upon which they rely in making the claim. Material facts are those facts essential in formulating a complete cause of action. If a material fact is omitted a cause of action is not effectively pleaded: *Young v. Borzoni et al*, 2007 BCCA 16 at para. 20.

[85] Bare allegations of wrongdoing supported by assumptions or speculation are not material facts. I am required to subject allegations to a meaningful analysis to determine if there is any basis for the claims. I am not required to accept as true speculative or fanciful claims. As stated by Madam Justice Forth in *Rai v. Meta Platforms, Inc.*, 2024 BCSC 1408:

> [22] […] However, when determining whether the pleadings disclose a reasonable cause of action, the court is not required to take as true, allegations based on pure assumptions or wild speculations, or facts that are incapable of proof: *Young v. Borzoni et al*, 2007 BCCA 16 at paras. 25–31; *McDaniel v. McDaniel*, 2009 BCCA 53 at para. 22.
>
> [23] Such allegations or facts should be subjected to skeptical analysis, particularly where the pleadings include broad allegations of things like harassment. Speculative or fanciful claims in a pleading may demonstrate that it is plain and obvious that no cause of action is disclosed: *Afifi v. British Columbia (Minister of Jobs, Tourism and Skills Training)*, 2020 BCSC 1451 at para. 27; *Olenga v. British Columbia*, 2015 BCSC 1050 at paras. 17, 21.
>
> [24] The purpose of R. 9-5(1)(a) is to ensure the parties and the court have a clear understanding of the nature of the claims advanced. A party pleading a particular claim must plead assertions of fact which would establish the essential elements of a successful claim if proven. Prolix, convoluted, and incomprehensible pleadings do not lend themselves to permit the parties to have a clear understanding of the claims advanced: *Gill v. Canada*, 2013 BCSC 1703 at para. 7.

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Analysis - MacIntyre's Claims Against the Province

[86] MacIntyre appears to assert a claim in contract against the Province, for example pleading principles of unconscionability, duress and frustration.

[87] It is clear there was no contractual relationship between MacIntyre and/or Big Bear and the Province. The loan agreements were between MacIntyre, his companies, and RBC and BDC.

[88] Claims for damages arising from orders made by the Public Health Officer ("PHO") pursuant to powers and duties conferred by the *PHA* are statute barred and as such it is plain and obvious that such claims are bound to fail.

[89] Section 92 of the *PHA* provides that there can be no legal proceeding for damages, including claims for damages pursuant to s. 24(1) of the *Charter*, commenced against the PHO.

[90] I adopt the conclusions of Justice Crerar in *Canadian Society for the Advancement of Science in Public Policy v. British Columbia*, 2025 BCSC 2051 at paras. 183–184 [*CSASPP*]:

> [183] All claims against the Health Officer are bound to fail. It is plain and obvious that *PHA* s. 92 immunises the Health Officer from any claim for damages, including *Charter* damages:
>
> > **Immunity from legal proceedings**
> >
> > **92** (1) Subject to subsection (2), **no legal proceeding for damages lies or may be commenced or maintained against a health officer, a commissioner under Division 1 [Inquiries] or a person acting under the order or direction of either of these, because of anything done or omitted**
> >
> > > **(a) in the exercise or intended exercise of a power under this or any other enactment, or**
> > >
> > > **(b) in the performance or intended performance of a duty under this or any other enactment.**
> >
> > (2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted in bad faith.
> >
> > (3) Subsection (1) does not absolve the government or a health authority from vicarious liability arising out of anything done or omitted by a person referred to in that subsection for which the government or

health authority would be vicariously liable if this section were not in force.

[emphasis added]

[184] In this, I reach a conclusion identical to that reached in *Weisenburger*, in respect of a similar claim directed against the Health Officer:

> [107] **In a strike application, the court should consider and give considerable weight to such immunity provisions. If it is plain and obvious that an immunity applies in light of the facts pleaded, the claim should be struck**: *Ernst* at paras. 19 (per Cromwell J), 67 (per Abella J, concurring), 149 (per McLachlin CJ dissenting); *Walkom v. Law Society of British Columbia*, 2019 BCCA 391 at para. 19.
>
> [108] In *Ernst*, the Supreme Court of Canada confirms the efficacy of such immunity clauses, striking a claim seeking Charter damages for alleged breaches of the plaintiff's s. 2(b) expression rights by the Alberta Energy Regulator. The Court notes that such clauses should be read expansively, to protect administrative decision-makers from the distraction of litigation flowing from the decisions they make in their legislatively-designated roles:
>
>> [57] Immunity is easily frustrated where the mere pleading of an allegation of bad faith or punitive conduct in a statement of claim can call into question a decision-maker's conduct: *Gonzalez*, at para. 53. Even qualified immunity undermines the decision-maker's ability to act impartially and independently, as the mere threat of litigation, achieved by artful pleadings, will require the decision-maker to engage with claims brought against him or her. As Lord Denning M.R. held, to be truly free in thought, judges should not be "plagued with allegations of malice or ill-will or bias or anything of the kind": *Sirros*, at p. 136, cited by *Morier*, at pp. 739-40.
>
> [109] It is conceded that the *Ernst* Court was considering the Alberta Energy Regulator, serving a quasi-adjudicative function, with an ostensibly absolute immunity clause. But these words also speak for the most part to the present defendants, legislatively entrusted to carry out their important public functions, here as well as below, in the discussion of factors countervailing against the justice and appropriateness of a Charter damages claim. **As noted by the Ernst Court, the immunity clause, there, as here, does not bar judicial oversight and intervention by way of judicial review; it only bars damages claims**: para. 33.
>
> …
>
> [111] **Section 92 is drafted in the broadest possible terms. There is no pleaded allegation that the PH Officer is acting in any other capacity than "in the exercise or intended exercise of a power under this or any other enactment" (s. 92(1)(a)), and it is difficult to conceive how one could plead or prove such a proposition.**[13]

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[emphasis added]

[91] Claims that the Province breached various duties do not make out a cause of action in negligence because:

1. There is no tort of breach of a statutory duty;

2. There is no general right in tort protecting against negligent infliction of pure economic loss;

3. The plaintiff has failed to plead material facts or law capable of establishing that the Province owed the plaintiffs a private law duty of care.

[92] To establish a claim in negligence the plaintiffs must establish that the:

1. Province owed them a duty of care;

2. Province breached the standard of care;

3. Plaintiffs sustained damaged; and

4. Province caused the damage.

Mustapha v. Culligan Canada Ltd., 2008 SCC 27 at para. 3.

[93] I am satisfied that the plaintiffs have failed to plead material facts capable of establishing all the foregoing elements.

[94] Most importantly, there are no material facts pleaded capable of establishing a relationship of proximity between the parties sufficient to give rise to a duty of care.

[95] The PHO does not owe a private duty of care to individuals or individual businesses. The analysis of private duties of care in the statutory context in *Chingee v. British Columbia*, 2017 BCCA 250 is instructive. Justice Harris stated:

> [59] It is possible to deal briefly with the claim in negligence against the province. The judge dismissed that claim on the basis that within this particular statutory scheme the plaintiff could not establish a sufficient

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> relationship of proximity and that in any event any *prima facie* duty of care should be negated as a matter of public policy. I agree.
>
> [60] I can see nothing in a statutory scheme designed to balance potentially competing interests in the context of promoting the public interest by, *inter alia*, encouraging the forestry industry, that suggests the Legislature contemplated creating a private law duty of care to any stakeholder within the framework of the scheme. As *Imperial Tobacco* confirms, conflicting public duties may rule out the possibility of proximity being established: para. 47. The regulators exercise public law discretionary powers in balancing competing interests in the public interest. As Justice Sharpe put it in *Eliopoulos Estate v. Ontario (Minister of Health and Long-Term Care)* (2006), 2006 CanLII 37121 (ON CA), 276 D.L.R. (4th) 411, 82 O.R. (3d) 321 (C.A.) at para. 17: "I fail to see how it could be possible to convert any of the Minister's public law discretionary powers, to be exercised in the general public interest, into private law duties owed to specific individuals."

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[96] There can be no question, the *PHA* and the PHO are concerned with the public interest generally, as such there is no relationship of proximity sufficient to create a private law duty of care to specific individuals.

[97] The failure to establish that the Province owed the plaintiffs a duty of care is also fatal to the plaintiffs' claim for economic loss: *1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35:

> [18] To recover for negligently caused loss, irrespective of the type of loss alleged, a plaintiff must prove all the elements of the tort of negligence: (1) that the defendant owed the plaintiff a duty of care; (2) that the defendant's conduct breached the standard of care; (3) that the plaintiff sustained damage; and (4) that the damage was caused, in fact and in law, by the defendant's breach. To satisfy the element of damage, the loss sought to be recovered must be the result of an interference with a legally cognizable right. As Cardozo C.J. explained in *Palsgraf v. Long Island Railroad Co.*, 162 N.E. 99 (N.Y. 1928), "[n]egligence is not actionable unless it involves the invasion of a legally protected interest, the violation of a right" (p. 99; see also *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 S.C.R. 263, at para. 45; *Livent*, at para. 30; R. Stevens, *Torts and Rights* (2007), at p. 24). It is well established that the law imposes liability for negligent interference with and injury to the rights in bodily integrity, mental health and property (*Saadati*, at para. 23, citing A. Ripstein, *Private Wrongs* (2016), at pp. 87 and 252 53). Recovery for injuries to these rights is grounded in the duty of care recognized in *Donoghue v. Stevenson*, [1932] A.C. 562 (H.L.).

[98] To establish the tort of misfeasance in public office, the plaintiff must plead material facts capable of establishing:

1) The public official deliberately engaged in unlawful conduct in his or her capacity as a public officer;

2) The public official was aware both that the conduct was unlawful and that it was likely to harm the plaintiffs;

3) The public official's tortious conduct was the illegal cause of the plaintiff's injuries; and

4) The injuries suffered are compensable in tort law.

British Columbia v. Greengen Holdings Ltd., 2025 BCCA 115 at para. 99.

[99] There are no materials facts pleaded that could establish that any public official deliberately engaged in unlawful conduct in their capacity as a public officer. Consequently, this claim is also bound to fail.

[100] It is plain and obvious that the claims for *Charter* breaches are bound to fail. No material facts have been pleaded in support of any *Charter* breach.

[101] In addition, MacIntyre's *Charter* claims run contrary to established jurisprudence and are bound to fail even had material facts been pleaded:

1. Section 7 of the *Charter* does not protect the right to engage in economic activity free from government regulation: *Maddock v. British Columbia*, 2022 BCSC 1605 at para. 81;

2. PHO orders that imposed consequences for failure to be vaccinated do not engage s. 7: *CSASPP* at paras. 226 and 240–241; and

3. Quarantine or other restrictions are not cruel and unusual punishment or treatment and therefore do not violate s. 12 of the *Charter*: *Turmel v. Canada*, 2021 FC 1095 at para. 21, and *Canadian Constitution Foundation v. Attorney General of Canada*, 2021 ONSC 2117 at para. 39.

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[102] In addition, the immunity provided by s. 92 of the *PHA* means that MacIntyre's *Charter* claims are bound to fail.

Conclusion

[103] I am satisfied that all the claims against the Province in the MacIntyre NOCC are bound to fail. Pursuant to R. 9-5(1)(a) the NOCC is struck as against the Province.

Analysis - MacIntyre's Claims against AGC

[104] The NOCC does not distinguish between claims being made by MacIntyre, Big Bear or both.

[105] The allegations being made against AGC, giving the NOCC a generous reading and assuming the facts to be true, are that:

> 1. AGC provided financial support to the banking sector but failed to provide support to small businesses.
>
> 2. Insolvency of the Plaintiffs was caused by public health orders that were ultra vires, because they were made by politicians rather than the PHO.
>
> 3. AGC engaged in misfeasance by broadly interfering in the regulatory and economic environment for political purposes, knowing that such interference would cause damage to the Plaintiffs.
>
> 4. AGC implemented loan programs that were administered by RBC, acting as agent for AGC, which encouraged the Plaintiffs to accumulate further debt.
>
> 5. AGC mandated that RBC engage in predatory lending practices which was unconscionable.
>
> 6. AGC loan programs increased inflation and interest rates which made the plaintiffs debt load unmanageable.
>
> 7. Defendants acting jointly caused the plaintiffs severe economic loss and caused MacIntyre severe personal injury.

[106] AGC submits that the plaintiffs have not pleaded material facts necessary to establish any known cause of action. I agree.

[107] A stated by Madam Justice Adair in *Green v. Proline Management Limited*, 2017 BCSC 1656:

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> [38] It is well established that a plaintiff has an obligation to clearly plead the material facts on which the plaintiff relies in making the claim. Pleadings must enable the court, within a reasonable time and review of the pleading, to find the cause of action and the material facts on which the cause of action is based. It is not for the court to articulate for a litigant a comprehensible and legally recognizable cause of action. Pleadings that do not meet these minimum requirements fail to satisfy the requirements of the ***Rules*** and are an abuse of the court's process.

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[108] As with the claims against the Province, the plaintiffs' claims against AGC appear to allege negligence, misfeasance in public office and *Charter* breaches.

[109] As discussed above, to establish negligence the plaintiffs must plead material facts to support the four elements of negligence. The first element is that the defendants owed the plaintiffs a private law duty of care.

[110] The material facts fail to identify any recognized duty of care or a novel duty of care, arising from the parties being in a sufficiently close relationship that the defendants owed the plaintiffs a *prima facie* duty of care: "It is only if harm is a reasonably foreseeable consequence of the conduct in question and there is a sufficient degree of proximity between the parties that a *prima facie* duty of care is established.": *Odhavji Estate v. Woodhouse*, 2003 SCC 69 at para. 48.

[111] There are no material facts pleaded that could establish that AGC owed the plaintiffs a private duty of care.

[112] The elements of misfeasance in public office are discussed above.

[113] The only material facts pleaded in the NOCC are:

> 4. The Defendant Governments engaged in misfeasance by interfering in the regulatory and economic environment of the Plaintiffs' businesses for improper political purposes, knowing such interference would cause the Plaintiffs injury.

[114] The NOCC makes bare assertions of misfeasance. The plaintiffs do not identify any federal government employee who they allege engaged in deliberate and unlawful conduct that the official knew was unlawful and likely to harm the plaintiff.

[115] As stated by Justice Iacobucci in *Odhavji Estate* at para. 28:

> […] In a democracy, public officers must retain the authority to make decisions that, where appropriate, are adverse to the interests of certain citizens. Knowledge of harm is thus an insufficient basis on which to conclude that the defendant has acted in bad faith or dishonestly. A public officer may in good faith make a decision that she or he knows to be adverse to interests of certain members of the public. In order for the conduct to fall within the scope of the tort, the officer must deliberately engage in conduct that he or she knows to be inconsistent with the obligations of the office.

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[116] Bare generalized assertions are incapable of supporting the elements of the tort of misfeasance in public office.

[117] The plaintiffs seek damages pursuant to s. 24(1) of the *Charter* for breaches of ss. 6, 7 and 12 of the *Charter*, but plead no material facts in support of any of the alleged breaches of *Charter* rights.

[118] In addition, for reasons stated above the claims of *Charter* breaches in the context of the facts pleaded are contrary to binding authority and bound to fail.

Conclusion

[119] I am satisfied that all the claims against AGC should be struck pursuant to R. 9-5(1)(a) as the MacIntyre NOCC discloses no reasonable claim against AGC. It is plain and obvious that there is no reasonable prospect of success.

SUMMARY OF CONCLUSIONS

[120] The RBC TPN’s against AGC and the Province are set aside pursuant to R. 3-5(8) on the basis that they do not meet the requirements for third party claims under R. 3-5(1). The defendants do not have leave to amend either third party notice.

[121] Similarly, the BDC TPN’s are also set aside for the same reasons also without leave to amend.

[122] The MacIntyre NOCC is struck in its entirety as against AGC and the Province, without leave to amend, on the basis that it discloses no reasonable cause of action.

"The Honourable Justice Fowler"

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