

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mackenzie v. Chartwell Asset Management Inc.*,
2025 BCSC 1982

Date: 20251009
Docket: S208955
Registry: New Westminster

Between:

Cheryl Mackenzie

Plaintiff

And

**Chartwell Asset Management Inc. and
Gregory Cameron**

Defendants

Proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

Before: The Honourable Justice Norell

Reasons for Judgment

Counsel for the Plaintiff:

S. Roxborough
C. Pabla

Counsel for the Defendant, G. Cameron:

J. Bank
T. Dalziel

Place and Date of Hearing:

New Westminster, B.C.
January 17, 2025

Place and Date of Judgment:

New Westminster, B.C.
October 9, 2025

Overview

[1] This is a proposed class proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 [CPA]. In reasons indexed at 2024 BCSC 1185 (the “Reasons”), I adjourned the plaintiff Ms. Mackenzie’s certification application to allow her to apply to further amend the amended notice of civil claim (“ANOCC”). For the most part, Ms. Mackenzie had not pleaded complete causes of action against the defendants Mr. Cameron and Chartwell Asset Management Inc. (“CAM”). Ms. Mackenzie now applies to amend in the form of a proposed further amended notice of civil claim (“FANOCC”).

[2] In summary, Ms. Mackenzie argues:

- a) The FANOCC cures the deficiencies in the ANOCC. It narrows the focus of the allegations and clarifies the different capacities in which Mr. Cameron is being sued. The FANOCC pleads sufficient material facts to support causes of action against Mr. Cameron in his capacity as financial planner, and as having independent liability as a director of CAM. These are not new causes of action against him. They have always been alleged. The FANOCC is not intended to allege a new cause of action against Mr. Cameron based on him being the Ultimate Designated Person (“UDP”) of CAM. Rather, Mr. Cameron’s duties as a UDP inform the standard of care required of him. To the extent Mr. Cameron objects to some pleadings on the basis that they plead evidence, Ms. Mackenzie is agreeable to refining those.
- b) It is just and convenient that the amendments be permitted. The amendments are necessary to determine the real issues in dispute between the parties. There is no loss of a limitation defence or prejudice to Mr. Cameron, and no unreasonable delay.

[3] In summary, Mr. Cameron argues:

- a) The FANOCC does not plead sufficient material facts to support causes of action against him: (i) as director of CAM; and (ii) for failing to fulfill his duties as UDP of CAM. Mr. Cameron does not argue that the FANOCC does not plead sufficient material facts with respect to the claim against him in his capacity as financial planner. The amendments

concerning the two disciplinary proceedings, plead evidence and are improper.

- b) To the extent the FANOCC sufficiently pleads causes of action, it is not just and convenient that certain amendments be allowed. The FANOCC pleads new factual situations to plead new causes of action against him outside the two-year limitation period, and he is prejudiced by the loss of a limitation defence. In particular, the causes of action against him in his capacity as financial planner are new. There has been delay and no reasonable explanation for it. This was part of a strategic decision by plaintiff's counsel to plead allegations generally. Further, the proposed amendments are inherently individualized and will not be amenable to being certified as common issues.

[4] According to counsel at the certification hearing, CAM is an empty shell. It did not appear on this application. As the proposed amendments concern it as well, I still must address those.

[5] For the reasons that follow, I grant leave for most but not all the amendments. The allegations against Mr. Cameron in his capacity as a director of CAM do not support an independent claim against him and leave is not granted with respect to those. It is just and convenient to grant leave for the amendments with respect to the claims against Mr. Cameron in his role as financial planner. There are other more minor amendments that are required.

Legal Framework

[6] Rule 6-1(1) of the *Supreme Court Civil Rules*, BC Reg 168/2009 [SCCR] governs amendments to pleadings. It states:

(1) Subject to Rules 6-2 (7) and (10) and 7-7 (5), a party may amend the whole or any part of a pleading filed by the party, other than to change parties or withdraw an admission

(a) once without leave of the court, at any time before service of the notice of trial, or

(b) after the notice of trial is served, only with

(i) leave of the court, or

(ii) written consent of the parties.

[7] The principles which guide the exercise of this Court's discretion to consider amendments are summarized in *Kwikwetlem First Nation v. British Columbia (Attorney General)*, 2021 BCCA 311 at para. 166, citing *Chouinard v. O'Connor*, 2011 BCCA 121 at para. 13:

(a) amendments should be permitted as are necessary to determine the real question in issue between the parties

...

(b) the court will not give its sanction to amendments which violate the rules that govern pleadings, including the prohibition of pleadings which disclose no reasonable claim. In considering this question, the court will apply the same tests and considerations as applicable on an application to strike claims already pleaded ...

(c) a party is not required to adduce evidence in support of a pleading before trial ...

(d) on an application to amend the facts alleged are taken as established

...

(e) the discretion is to be exercised judicially, in accordance with the evidence adduced and the guidelines of the authorities. Factors to be considered include: the extent of delay, the reasons for delay, any explanation put forward to account for the delay, the degree of prejudice caused by the delay, the extent of the connection between the existing claims and a proposed new cause of action. The over-riding consideration is what is just and convenient....

[8] The rules that govern pleadings that are pertinent are that a pleading should not be struck (or in this case denied) for failure to disclose a cause of action unless it is "plain and obvious" that no cause of action exists or the claim cannot succeed. A plaintiff must clearly plead the material facts in support of each cause of action: Reasons at paras. 52-56.

[9] As Mr. Cameron argues that some of the allegations in the FANOCC raise new causes of action against him beyond the expiry of a limitation period, s. 22(5) of the *Limitation Act*, S.B.C. 2012 c. 13 [LA] is also applicable. That subsection provides the court with authority to allow an amendment of a pleading to raise a new claim even though it is barred by the passage of time:

s. 22(5) In any court proceeding, the court may, on terms as to costs or otherwise that the court considers just, allow the amendment of a pleading to raise a new claim even though, at the time of the amendment, a court proceeding could not, under section 6, 7 or 21, be commenced with respect to that claim.

[10] The general limitation period for the causes of action pleaded in this case is two years after the day on which the claim is “discovered”: *LA*, s. 6(1). The general rules for when a claim is discovered are set out in s. 8 of the *LA*. Mr. Cameron argues that the latest Ms. Mackenzie could have discovered the potential claims against him in his capacity as financial planner was in September 2017, when she made a complaint about him to FP Canada, which is the certification organization of financial planners.

[11] I will discuss more specific principles and case authorities below when analyzing specific amendments.

ANOCC

[12] I will review the evolution of the pleadings as it has some bearing on the arguments of the parties as to whether Mr. Cameron has always been sued in his capacity as financial planner. Ms. Mackenzie’s claim is for lost monies invested with CAM. In December 2018, Ms. Mackenzie filed the notice of civil claim (“NOCC”) against CAM, Mr. Cameron, and several other people who were associated with CAM. In November 2022, she filed the ANOCC. The paragraphs in the NOCC and the ANOCC are the same, except as to one change which I discuss below, so the following description applies to both.

[13] Under the heading “Overview”, paras. 1-4 allege that the “Defendants” provided “financial investment services and, or financial planning services to members of the public”. Ms. Mackenzie and the proposed class were “misinformed as to the actual nature of the investments”, and the Defendants failed to comply with their “professional duties”.

[14] Under the heading “The Representative Plaintiff”, paras. 5-22 describe how Ms. Mackenzie came to know Mr. Cameron and invest in CAM. She alleges that Mr. Cameron “managed individuals’ investments through” CAM, and that Mr. Cameron was her only contact regarding her investments. In January 2009, Ms. Mackenzie transferred her RRSP to CAM. Mr. Cameron assured her that the “Defendants’ primary concern was long term retirement security and the interest of investors was his primary focus”. Ms. Mackenzie initially had her RRSP funds 50% in a Real Estate Investment Trust (“REIT”) and 50% in the “Life Settlement Fund” (“LSF”). In June 2010, Mr. Cameron suggested that she transfer all her funds into the “Conservative Portfolio”, as this would be a better fit for her investments.

Mr. Cameron “only mentioned” that this portfolio included the “High Income Fund” (“HIF”), and that overall, it represented a better balance of risk. In June 2010, Ms. Mackenzie transferred 100% of her funds into the Conservative Portfolio. During her investments, Ms. Mackenzie found it difficult to obtain any meaningful information on how her funds were being invested. In February 2017, she was informed by Mr. Cameron that 80% of the HIF, part of the Conservative Portfolio, was invested in a loan that had gone into default. Both the LSF and the REIT were not liquid, and as a result, all the funds were being frozen until they gained liquidity. Ms. Mackenzie discovered that the Defendants “had made misrepresentations as to the nature of the investments”, and she lost a substantial amount of her investments.

[15] Under the heading “The Defendants”, paras. 23-33 describe the then defendants and their roles. The Defendants are alleged to be “directly connected as financial planners, investment advisors, and, or related, parent or wholly-owned subsidiary investment companies”. Each Defendant is then described as: (a) CAM, a company that provides investment services; (b) Quadrus Investment Services Ltd., a company that provides investment services; (c) Gregory Cameron, the “director and founder” of CAM; (d) Matthew Cameron, who is Gregory Cameron’s son, the compliance officer at CAM; (e) David Nelson, the vice president and chief operating officer of CAM; (f) Constantine Lycos, a director, lead portfolio manager, investment advisor, compliance officer and head of the investment committee of CAM; (g) Eric Mayrhofer, an investment advisor of CAM; (h) Bo Chew, an associate portfolio manager and director of CAM; and (i) Rob Charlton, the auditor for CAM who prepared financial statements. All the individual defendants except Mr. Charlton are described as involved in the management of the investment funds given to CAM.

[16] Under the heading “The Class and Class Period”, para. 34 describes the proposed class as “All persons in Canada ... who, at any time, invested with” CAM or sub-classes to be determined by the Court.

[17] Under the headings “The Defendants’ Wrong Doings” and “The Plaintiff’s Harm”, paras. 35-48 describe the Defendants further. All the personal defendants were as a group identified as the “Individual Defendants” and are alleged to have been “employees and, or members and, or agents” of CAM and “participated in the investment strategy and, or investment advice and, or management of

investment funds”. It is alleged that the Defendants: (i) owed a contractual, common law, and fiduciary duty of care to exercise professional care when providing financial planning services, investment advice and in managing funds; (ii) failed to adequately disclose the level of risk; (iii) took active steps to reduce any perception of risk; (iv) misrepresented the level of risk with a reference to the loan in the HIF; and (v) deceived Ms. Mackenzie and the proposed class as to the amount of risk. As a result, Ms. Mackenzie and the proposed class suffered substantial losses.

[18] In Part 3: Legal Basis, all the allegations of wrongdoing at paras. 39-44 and at paras. 50-55 refer collectively to CAM and the Individual Defendants, or Mr. Cameron and the other Individual Defendants, but without delineating between them or particularizing which defendant owed a duty, and what that duty consisted of other than general allegations of what could be described as “Know Your Client”, and “Know Your Product” duties. The causes of action claimed are negligence, negligent misrepresentation, fraudulent misrepresentation, breach of contract, and breach of fiduciary duty.

[19] The ANOCC is identical to the NOCC except that Ms. Mackenzie discontinued her action against all the defendants except CAM and Gregory Cameron and struck out the other names in the style of cause. The paragraph describing Mr. Charlton was deleted. Otherwise, the ANOCC still described all the other Individual Defendants, and the allegations against the “Defendants” and “Individual Defendants” remained as they had been before except they now could effectively only refer to CAM and Mr. Cameron.

[20] In the Reasons, I adjourned the certification application to permit Ms. Mackenzie to seek leave to amend her pleadings. Ms. Mackenzie had “identified potential focused claims, arising out of the FPCSC and BCSEC rulings and settlement agreements, which possibly could be amenable to a class proceeding”: at para. 171. I identified other factors that were relevant to the decision to adjourn the application to permit Ms. Mackenzie an opportunity to amend, which I will return to below: at paras. 172-174.

Analysis

[21] The FANOCC continues to claim negligence, negligent misrepresentation, fraudulent misrepresentation, breach of contract, and breach of fiduciary duty

against CAM and Mr. Cameron. The analysis below is divided as follows: first, amendments for which there is no objection as to the sufficiency of the pleading; and second, Mr. Cameron's objections.

Amendments for which there is no objection as to sufficiency

Narrowing allegations

[22] In my view the following amendments are just and convenient and leave is granted to plead them:

- a) Paragraphs which delete references to the former defendants against whom Ms. Mackenzie has discontinued and consequential amendments that are required throughout: former paragraphs 17 (new para. 19), 25, 27-31, 36 (new para. 41), 37, 38, 39 (new para. 47, but only the portion that deletes the section regarding the former Individual Defendants), 41 (new para. 50), and 42 (new para. 52).
- b) Paragraphs which narrow the allegations to the Magna Funds only, define the Conservative Portfolio as including the REIT, HIF and LSF, and more specifically identify the "Health Loan" which went into default in the HIF in July 2016 and was part of the Magna Funds: new paras. 2, 18, 20, 23, 26, 28 (the portion concerning the Magna Funds only), 50, 53, 61, 66

Negligence

[23] In the Reasons, I found that Ms. Mackenzie had sufficiently pleaded facts which support that a duty of care was owed by CAM, and by Mr. Cameron "arising out her personal dealings" with him and restricted to the Conservative Fund which includes the HIF. She had not pleaded all the facts she alleged in oral submissions at the hearing in support of her allegations, being the circumstances outlined in the two disciplinary hearings or that the defendants were negligent in calculating the value of the HIF: at paras. 94-95. I found that Ms. Mackenzie had not pleaded an independent claim in negligence against Mr. Cameron "beyond her personal interactions with him" for his involvement in or participation in the management of investments at CAM: para. 94. In other words, she had pleaded an independent cause of action in negligence against him for her personal interactions with him where it is alleged that he provided her investment advice: para. 91.

[24] In the Facts section, the FANOCC pleads further facts of how CAM failed to assess risk and value the HIF, consistent with the oral submissions made at the certification hearing:

- a) CAM “failed to re-assess the value of the [HIF] despite the presence of risk indicators and calculated the net asset value of the [HIF] without having sufficient information to do so”: new para. 46
- b) CAM advanced \$5 million USD on the Health Loan between March 2010 and March 2011, and from 2010 to 2016 the Health Loan comprised a large portion of the HIF’s investments. In about 2014, the debtors stopped making timely interest payments. CAM did not have sufficient information about the Health Capital loan in the HIF to support its calculation of the value of the HIF as the debtors stopped providing reporting documents in 2012, and CAM did not reassess the value of the HIF despite there being risk indicators related to the Health Loan such as missed or late interest and principal payments to CAM: new paras. 58-59.

[25] In the Legal Basis section, the FANOCC adds new paragraphs against CAM for which there is no objection:

73. Chartwell Inc. managed the Plaintiff and the Class Members' investment funds in a discretionary account. Specifically, Chartwell Inc. undertook to and had the discretion to invest the Plaintiff and the Class Members' funds and the Plaintiff and the Class Members relied on Chartwell Inc. to invest their funds in a way that aligned with their investment objectives.

74. Chartwell Inc. breached its duty of care that it owed to the Plaintiff and the Class Members when it calculated the net asset value of the High Income Fund without considering the impact of the Health Loan on the value, and subsequently distributed the MAP Statements to the Plaintiff and the Class with that inaccurate value. Chartwell Inc. breached its duty of care that it owed to the Plaintiff and the Class Members when it failed to advise the Plaintiff and the Class Members of the Health Loan’s impact on their investments in the High Income Fund and other Magna Funds.

75. Chartwell Inc.'s failure to accurately transmit information regarding the Magna Funds to the Plaintiff and the Class Members resulted in the Plaintiff and the Class Members losing significant amounts of their investments.

[26] I find it is just and convenient that Ms. Mackenzie be granted leave to make these amendments against CAM. The amendments are necessary to determine

the real issues between the parties. While there has been delay in pleading these allegations more specifically, and I found in the Reasons that they should have been pleaded more specifically earlier (at paras. 171-172), no prejudice is alleged.

[27] The FANOCC also adds paragraphs to plead more specific allegations of negligence against Mr. Cameron in his capacity as financial planner. In the Facts section, the FANOCC pleads in new paras. 47-48:

47. Mr. Cameron, in his capacity as financial planner, failed to adequately disclose the level of risk that the Plaintiff and Class Members were being exposed to and actively took steps to reduce any perception of risk by maintaining that the investments in the Magna Funds were low risk.

48. Mr. Cameron, in his capacity as financial planner, placed the Plaintiff and Class Members into investments in the Magna Funds not suited to their objectives without adequately disclosing the level of risks of the investments in the Magna Funds and the increasing level of risk tied to the investments.

[28] In the Legal Basis section, the FANOCC adds new paras. 76-79 against Mr. Cameron:

76. Mr. Cameron, in his capacity as financial planner, breached his duty of care that he owed to the Plaintiff and the Proposed Sub-Class when he placed the Plaintiff and the Proposed Sub-Class into unsuitable investments without adequately disclosing the level of risks of the Magna Funds and the increasing level of risk of their investments in the Magna Funds over time.

77. Mr. Cameron, in his capacity as financial planner, failed to advise the Plaintiff and the Proposed Sub-Class of the Health Loan's impact on their investments in the High Income Fund once the information came to his attention, and effectively robbed the Plaintiff and the Proposed Sub-Class from losing further funds.

78. Mr. Cameron, in his capacity as financial planner, failed to advise the Plaintiff and the Proposed Sub-Class of only investment strategies, involving the Magna Funds, that aligned with the Plaintiff and the Class Member's objectives. Instead, he advised the Plaintiff and the Proposed Sub-Class of strategies that did not support their investment objectives, personal circumstances and investment knowledge.

79. Mr. Cameron's advice regarding the Magna Funds resulted in the Plaintiff and the Proposed Sub-Class losing significant amounts of their investments.

[29] Some of these are alleged facts that should be pleaded in the Facts section rather than the Legal Basis section. Nevertheless, reading the FANOCC as a whole, the proposed amendments along with the narrowed facts sufficiently plead negligence against Mr. Cameron in his capacity as financial planner. The claims as

pleaded are not bound to fail. However, as will be discussed later, Mr. Cameron objects to these paragraphs on the basis that they raise a new cause of action against him in his capacity as financial planner.

[30] Finally, the FANOCC adds new paras. 80-82 to plead allegations in negligence against Mr. Cameron in his capacity as director of CAM. Mr. Cameron objects to the sufficiency of those paragraphs on the basis that they do not plead an independent claim against him. I will replicate those paragraphs when discussing that objection.

Negligent and Fraudulent Misrepresentation

[31] With respect to the claims for negligent misrepresentation, in the Reasons I found that Ms. Mackenzie had pleaded sufficient facts to establish a special relationship which could support a duty of care between her and CAM, and her and Mr. Cameron, but that she had failed to sufficiently plead the material facts of what representations were made, and/or how they were negligent, and/or how she relied on the misrepresentations. However, in oral submissions, she had identified statements that could be misrepresentations if they were pleaded: paras. 100 and 104. As for the action for fraudulent misrepresentation, my conclusions were much the same. In addition, there was an absence of some elements being the requisite intent and inducement: at para. 107.

[32] In the Facts section, the FANOCC pleads the following against CAM:

- a) CAM “created and distributed Summary Information Sheets ... which stated the investment objectives of various Magna Funds including the [HIF]. The Summary Information Sheets also provided measurement of potential risk of and return on the investments in the Magna Funds”: new para. 42.
- b) CAM “made representations on their website that their investment philosophy was focusing on positive returns with as little risk as possible” and on which Ms. Mackenzie and the proposed class relied: new para. 45.
- c) CAM described its Conservative Portfolio as having as little risk as possible “on their website”. The Conservative Portfolio included the [HIF] which had the majority of its investment in “the Health Loan” that

defaulted in July 2016. The defendants “deceived” Ms. Mackenzie and the proposed class members as to the amount of risk in the Magna Funds: new paras. 49-50.

- d) CAM distributed statements relating to the Managed Account Program to Ms. Mackenzie and the proposed class (the “MAP Statements”). I note these are account statements. “In the MAP Statements from December of 2016, CAM represented the book value of the [HIF] and [LSF] to be approximately \$227,000. In or around November of 2022, [Ms. Mackenzie] received a statement from the Olympia Trust Company that showed the total market value for the same number of units of the HIF and LSF was about \$12,000: new paras. 38 and 51.

[33] In the Legal Basis section, the FANOCC adds the following paragraphs against CAM, consistent with the oral submissions at the certification hearing:

94. Chartwell Inc. made representations to the class as a whole when Chartwell Inc. published and distributed the Summary Information Sheets with the risk objectives of the Magna Funds as being low risk and maintained a website that explained the investment philosophy of Chartwell Inc, as being low risk. Chartwell Inc. made representations about the value of the High Income Fund in the MAP Statements that Chartwell Inc. distributed to the Plaintiff and the Class Members, despite knowing that accurate valuations could not be made due to the Health Loan. Despite these representations, the investments in the Magna Funds entailed high risks.

95. Chartwell Inc. made these representations regarding the Summary Information Sheets, website, and MAP Statements fraudulently or acted negligently in making them, as Chartwell Inc, either intended for the Plaintiff and Class Members to act on these representations to invest in the Magna Funds and/or did not take the steps to inform itself of the high risks the Magna Funds entailed.

96. The Plaintiff and the Class Members relied on and/or were induced by the representations made by Chartwell Inc, to continue investing in the Magna Funds and/or make new investments as they believed they were low risk. The reliance was detrimental, and the Plaintiff and the Class Members lost significant investments.

[34] I find it is just and convenient for Ms. Mackenzie to be granted leave for the above amendments against CAM. The amendments will have to be further particularized with respect to the timing of some of the alleged misrepresentations, but read generously, they the plead misrepresentations sufficiently that the claim against CAM is not bound to fail. The amendments are necessary to determine the real issues between the parties. While there has been delay in pleading these

allegations more specifically, and I found in the Reasons that they should have been pleaded more specifically earlier, no prejudice is alleged.

[35] With respect to Mr. Cameron, the proposed amendments to the Facts section of the FANOCOC add further details regarding what Mr. Cameron told Ms. Mackenzie regarding the Conservative Portfolio, specifically that Mr. Cameron “did not mention what further investments were made with the funds in the [HIF]” which is an allegation of misrepresentation by omission, and by implication from other paragraphs, that this was the Health Loan: new para. 16. The proposed amendments also specifically plead that Ms. Mackenzie relied on Mr. Cameron’s advice that the Conservative Portfolio (now described as including the HIF, REIT and LSF) was low risk, and that Ms. Mackenzie invested 100% of her funds in the Conservative Portfolio: paras. 16-17.

[36] In the Legal Basis section, the FANOCOC adds new paras. 91-93 to plead allegations of negligent and fraudulent misrepresentation against Mr. Cameron in his capacity as financial planner:

91. Mr. Cameron, in his role as financial planner, made representations about the Magna Funds to the Plaintiff and the Proposed Sub-Class fraudulently as he made them knowing them to be false, made them without belief in their truth, or made them recklessly not caring whether they were true or false.

92. Specifically, Mr. Cameron made representations to the Plaintiff and the Proposed Sub-Class that investments in the Magna Funds, which included the High Income Fund were low risk. The representations were false in fact, as the investments entailed high risks. Mr. Cameron either knew these representations were false as the investments were high risk, or made the false representations recklessly, not knowing if they were true or false, as he did not take the steps required in his role as a trusted advisor to confirm the truth of the representations. Mr. Cameron intended for the Plaintiff and the Proposed Sub-Class to act on these representations by investing in the Magna Funds that Mr. Cameron recommended. These false representations made by a trusted advisor induced the Plaintiff and the Proposed Sub-Class to make investments as recommended by Mr. Cameron and resulted in the Plaintiff and the Proposed Sub-Class suffering a detriment.

93. In the alternative, the Plaintiff and the Proposed Sub-Class had a special relationship with Mr. Cameron as Mr. Cameron undertook to apply a special skill for the benefit of the Plaintiff and the Proposed Sub-Class regarding their investments in the Magna Funds. Mr. Cameron made misleading representations about the nature of the Plaintiff and the Proposed Sub-Class’ investments in the Magna Funds, as he stated that these investments were low risk. Mr. Cameron acted negligently when making the misrepresentations because he did not take the requisite steps to inform himself of the risk of the investments and omitted disclosing known risks to the Plaintiff and the Proposed Sub-Class at the time of their

investment and thereafter, as is his duty. The Plaintiff and the Proposed Sub-Class relied on these representations in a reasonable manner, as they were made by a trusted advisor, to consent to what they were advised to believe were low risk investments. This reliance was detrimental as the Plaintiff and the Proposed Sub-Class lost significant investments.

[37] Again, some of these are allegations should be in the Facts section, but read as a whole, the FANOCC sufficiently pleads negligent and fraudulent misrepresentation against Mr. Cameron in his capacity as financial planner. The FANOCC identifies: (i) what the representations were to Ms. Mackenzie; (ii) how they were false; (iii) that they were relied upon; and (iv) for fraudulent misrepresentation, the requisite intent and inducement. The claims as pleaded are not bound to fail. However, as I will discuss below, Mr. Cameron objects to these pleadings against him in his capacity as financial planner as he alleges that they plead a new cause of action.

[38] Finally, the FANOCC adds new paras. 96-98 to plead negligent and fraudulent misrepresentation against Mr. Cameron in his capacity as director of CAM. Mr. Cameron objects to the sufficiency of these pleadings on the basis that they do not plead an independent cause of action against him. I will replicate those pleadings when discussing that objection.

Breach of Contract

[39] In the Reasons I concluded that the ANOCC alleges that Ms. Mackenzie entered into a contract with CAM, but the terms of the contract and how the terms were breached were not pleaded. Further, the ANOCC failed to plead a contract with Mr. Cameron, and even if the ANOCC could be read as alleging such a contract, no material facts concerning the terms of the contract and how the terms were breached were alleged: at paras. 112-114.

[40] With respect to CAM, the Facts section of the FANOCC alleges that Ms. Mackenzie completed and signed an application for CAM's Managed Account Program as her investment portfolio manager, and an officer of CAM signed the application "in agreement". The MAP Statements showed that CAM was managing Ms. Mackenzie's and the proposed class' investments in a "discretionary account": new paras. 11 and 38.

[41] In the Legal Basis section, the FANOCC adds the following new paragraphs against CAM:

67. The Plaintiff and the Class Members each had one or more contractual agreements with Chartwell Inc. regarding their investments in the Magna Funds. The general terms of the agreements were that the Plaintiff and the Class Members would provide Chartwell Inc. with funds to invest in the Magna Funds. Chartwell Inc. would then have the discretion to manage those funds on an ongoing basis taking into account the investment objectives, risk tolerance, and personal and financial circumstances of the Plaintiff and the Class Members.

68. Chartwell Inc. had failed to meet the applicable standard of honesty in the performance of Chartwell Inc.'s contractual obligations when it failed to re-evaluate the High Income Fund, despite learning of payment and reporting issues regarding the Health Loan, and did not advise the Plaintiff and the Class Members of the increased risks and potential change in valuation of the High Income Fund and Magna Funds.

69. Chartwell Inc. breached its contractual obligation to make investments in the Magna Funds on behalf of the Plaintiff and the Class Members that aligned with the Plaintiff and Class Members' investment objectives and risk tolerances when it made investments that did not align with the Plaintiff and Class Members' objectives.

[42] I find it is just and convenient that Ms. Mackenzie be granted leave for the above amendments against CAM. Again, some of these pleadings should be in the Facts section, but read as a whole, I find that the FANOCC sufficiently pleads breach of contract against CAM. The pleading is not bound to fail. The amendments are necessary to determine the real issues between the parties. While there has been delay in pleading these allegations more specifically, and I found in the Reasons that they should have been pleaded more specifically earlier, no prejudice is alleged.

[43] The Legal Basis section also adds the following paragraphs against Mr. Cameron in his capacity as financial planner:

70. The Plaintiff and the Proposed Sub-Class each had one or more contractual agreements with Mr. Cameron as their financial planner regarding their investments. The Plaintiff and the Proposed Sub-Class would advise Mr. Cameron of their investment objectives, risk tolerance, and/or personal and financial circumstances. Mr. Cameron would then advise the Plaintiff and the Proposed Sub-Class of suitable investments and help Chartwell Inc. make investments suitable to the Plaintiff and the Proposed Sub-Class based on these factors.

71. Mr. Cameron breached his contractual obligations when he failed to advise the Plaintiff and the Proposed Sub-Class of the risks of investing in the Magna Funds and the increased risk of their investments overtime once he learned about increasing issues with the Health Loan, as the investments were no longer suitable to the Proposed Sub-Class.

[44] Some of these allegations should be in the Facts section of the FANOCC. The material facts are sparse and could be more clearly pleaded. For example, rather than explicitly state that it was a term of the contract that Mr. Cameron would provide appropriate financial advice which would accord with the client's circumstances, new para. 70 pleads this by implication in a round about way. Nevertheless, read generously and as a whole, the FANOCC pleads sufficient material facts and the elements required for breach of contract against Mr. Cameron in his capacity as financial planner. The claims as pleaded are not bound to fail. However, as I will discuss below, Mr. Cameron objects to these pleadings on the basis that they raise a new cause of action against him in his capacity as financial planner.

Breach of Fiduciary Duty

[45] In the Reasons, I determined that the facts supporting an *ad hoc* fiduciary relationship were required and had not been pleaded. With respect to CAM, I found that the Managed Account Program was pleaded, and it was possible by referring to the terms of that account to infer the indicia that could support an *ad hoc* fiduciary duty, but no facts supporting these indicia were pleaded in the ANOCC. With respect to the fiduciary duty alleged to be owed by Mr. Cameron, the ANOCC failed to plead any material facts to support the indicia of an *ad hoc* fiduciary relationship: at paras. 119-121.

[46] In the FANOCC, Ms. Mackenzie adds new paras. 11 and 38, discussed above, which refer to the Managed Account Program which is the contract between Ms. Mackenzie and CAM, and which is identified as a discretionary account.

[47] In the Legal Basis section, the FANOCC adds the following paragraphs against CAM:

86. Chartwell Inc. was managing the Plaintiff and the Class Members' investments in a discretionary account. Through the Managed Account Program. Chartwell Inc. had the scope for the exercise of discretion or power to manage the Plaintiff and Class Members' investments in the Magna Funds. Chartwell Inc. could unilaterally exercise that power or discretion so as to affect the Plaintiff and the Class Members' legal or practical interest. The Plaintiff and the Class Members were particularly vulnerable to Chartwell Inc. holding that discretion or power as they trusted Chartwell Inc. to manage their funds. Chartwell Inc. had undertaken and accepted a responsibility to act in the best interest of the Plaintiff and the Class Members in accordance with a duty of loyalty.

87. Chartwell Inc. breached the fiduciary duties owed to the Plaintiff and other Class Members when it exercised its discretion to make investments in the Magna Funds on behalf of the Plaintiff and the Class Members that exceeded the risk tolerance for the Plaintiff and the Class Members.

[48] I find it is just and convenient that Ms. Mackenzie be granted leave for the above amendments against CAM. Some of these pleadings should be in the Facts section but read as a whole, I find that the FANOCC sufficiently pleads an *ad hoc* breach of fiduciary duty against CAM. The pleading is not bound to fail. The amendments are necessary to determine the real issues between the parties. While there has been delay in pleading these allegations more specifically, and I found in the Reasons that they should have been pleaded more specifically earlier, no prejudice is alleged.

[49] In the Legal Basis section, the FANOCC adds the following paragraphs against Mr. Cameron in his capacity as financial planner:

88. Mr. Cameron, in his capacity as financial planner, had the discretion to advise the Plaintiff and the Class Members regarding their investments in the Magna Funds. Mr. Cameron had the scope for the exercise of discretion or power to advise the Plaintiff and the Class Members to invest in the Magna Funds. Mr. Cameron could unilaterally exercise his power to affect the Plaintiff and Class Member's legal or practical interest by advising them to make certain investments and then providing this information to Chartwell Inc. The Plaintiff and the Class Members were particularly vulnerable to Mr. Cameron holding that discretion or power as they lacked investment knowledge and trusted him to provide them accurate information. Mr. Cameron had undertaken and accepted a responsibility to act in the best interest of the Plaintiff and the Class Members in accordance with a duty of loyalty.

89. Mr. Cameron breached his fiduciary duty he owed to the Plaintiff and the class when he advised the Plaintiff and the Class Members that their investments in the Magna Funds were low risk when they in fact entailed high risks and completed Know Your Client forms without the Plaintiff and Class Members advising or accepting the level of risk indicated on the forms.

[50] Some of these allegations should be in the Facts section of the FANOCC, but reading the FANOCC as a whole, it pleads sufficient material facts and the elements required for breach of fiduciary duty against Mr. Cameron. Once again, the material facts in support of the claim are sparse and could be better pleaded. To find them, these paragraphs need to be read in conjunction with the similar pleadings against CAM which refer to the Managed Account Program documents which are incorporated by reference into the FANOCC. Those documents create a

discretionary account where CAM “with the help of [the client’s] financial planner” will make the investment decisions. I cannot conclude the allegation is bound to fail. However, Mr. Cameron objects to these pleadings on the basis that they raise a new cause of action against him in his capacity as financial planner. I address that argument when discussing Mr. Cameron’s objections.

Punitive Damages

[51] Finally, although a claim for punitive damages is not a cause of action, in the Reasons I found that the ANOCC did not plead facts to support the conclusory allegations of high-handed malicious conduct: at para. 125.

[52] In the Legal Basis section, the FANOCC adds new paras. 105-106, 109, and 112-113 with respect to CAM:

105. Chartwell Inc. made fraudulent or negligent representations to the Plaintiff and the Class Members when it published and distributed the Summary Information Sheets with the low risk objectives of the Magna Funds and maintained a website that explained the investment philosophy of Chartwell Inc. as being low risk, when in fact the investments in the Magna Funds entailed high risks.

106. Chartwell Inc. made fraudulent or negligent representations about the value of the High Income Fund in the MAP Statements that Chartwell Inc. distributed to the Plaintiffs and the Class Members, despite knowing that accurate valuations could not be made due to the Health Loan.

...

109. Chartwell Inc. breached the fiduciary duties owed to the Plaintiff and other Class Members when it exercised its discretion to make investments in the Magna Funds on behalf of the

Plaintiff and the Class Members that exceeded the risk tolerance for the Plaintiff and the Class Members

...

112. Chartwell Inc. and Mr. Cameron had multiple opportunities to advise the Plaintiff and the Class Members of the true risk of investing in the Magna Funds at the time of their investments, and over time beginning from 2010, when issues with the Health Loan began, continued, and worsened, impacting the value of the High Income Fund and the value of the Plaintiff and the Class Members' investments in the Magna Funds.

113. Punitive or exemplary damages ought to be awarded to the Class to discourage breaches in the fiduciary duty of investment advisors and financial planners in the future.

[53] These paragraphs essentially repeat the allegations of negligent and fraudulent misrepresentations and breach of fiduciary duty, plus allege that CAM had “multiple opportunities” over time to advise Ms. Mackenzie and the proposed

class of the true risks at the time of their investments starting in 2010 when the issues with the Health Loan began and continued.

[54] I find it is just and convenient that Ms. Mackenzie be granted leave for the above amendments against CAM. In my view, these paragraphs combined with the allegations of facts in the disciplinary proceedings, sufficiently plead a basis for punitive damages. The claim for relief is not bound to fail. The amendments are necessary to determine the real issues between the parties. While there has been delay in pleading these allegations more specifically, and I found in the Reasons that they should have been pleaded more specifically earlier, no prejudice is alleged.

[55] In the Legal Basis section, the FANOCOC adds paras. 104 and 110 (in addition to para. 113 above) with respect to Mr. Cameron in his capacity as financial planner:

104. Mr. Cameron, as financial planner, made fraudulent or negligent representations to the Plaintiff and the Proposed Sub-Class that their investments in the Magna Funds were low- risk when they in fact entailed higher risks, despite being a trusted advisor to the Plaintiff and the Proposed Sub-Class.

110. Mr. Cameron, as financial planner, breached his fiduciary duty he owed to the Plaintiff and the Proposed Sub-Class when he advised the Plaintiff and the Class that their investments in the Magna Funds were low risk when they in fact in entailed high risks and completed Know Your Client forms without the Plaintiff and Class Members advising or accepting the level of risk indicated on the forms.

[56] These paragraphs make similar allegations as against CAM, and for the same reasons I find they are sufficiently pleaded. However, Mr. Cameron objects to these paragraphs on the basis that they raise a new claim for relief against him in his capacity as financial planner. I will address that argument when discussing Mr. Cameron's objections.

[57] The FANOCOC at new para. 107 also seeks punitive damages against Mr. Cameron in his capacity as director of CAM. As Mr. Cameron argues that this, along with other paragraphs that concern him in his capacity as a director, do not plead independent causes of action against him, I will replicate this paragraph when discussing Mr. Cameron's objections.

Mr. Cameron's Objections

Amendments concerning Mr. Cameron in his capacity as director of CAM

[58] In the Reasons at para. 78-82, I noted Mr. Cameron's position that he was not being sued in his capacity as financial planner, but only in his capacity as director of CAM, and that no independent causes of action were pleaded against him as director. I referred to the legal principles regarding the liability of corporate principals or employees in tort for their actions or omissions in carrying out acts of and for a company, as discussed in *The Owners, Strata Plan KAS 3410 v. Meritage Lofts Inc.*, 2022 BCCA 109 at paras. 27-29 [*Meritage*]. As negligence was the only cause of action that was sufficiently pleaded, I only found it necessary to address this argument under that heading. At para. 92, I concluded:

[92] I turn to the second aspect of the claim against Mr. Cameron, being his alleged participation in the management of CAM. In my view, other than what Ms. Mackenzie has alleged with respect to her personal interactions with Mr. Cameron, the ANOCC does not plead an independent claim in negligence against him for that alleged participation. There are no facts that describe with any specificity what he is alleged to have done that is independently tortious. There are only undifferentiated allegations against Mr. Cameron and CAM. The ANOCC suffers the same deficiency as the pleadings in *The Owners, Strata Plan No. VIS3578 v. John A. Neilson Architects Inc.*, 2010 BCCA 329, as described in *Meritage Lofts*, where the pleadings "simply introduce the individuals as directors or employees of their corporations and then allege that they owed the same duties, committed the same breaches, and caused the same damages as their companies".

[Emphasis added.]

[59] In addition to the allegations already existing in the ANOCC that Mr. Cameron was a director and founder of CAM and was involved in the management or control of the funds invested with CAM, the FANOCC alleges that Mr. Cameron "substantially owned, operated and controlled" CAM: new para. 28. Appropriately, this is not objected to by Mr. Cameron as it simply provides further detail of his relationship with CAM. It is just and convenient that Ms. Mackenzie be given leave to make that amendment.

[60] The paragraphs to which Mr. Cameron objects are in the Legal Basis section of the FANOCC:

a) Under the heading Negligence:

80. Mr. Cameron, as director of Chartwell Inc., owed a duty of care to the Plaintiff and the Class Members to make investments with their funds in a way that aligned with their investment objectives.

81. Mr. Cameron, as director of Chartwell Inc., was negligent in maintaining the Plaintiff and Class Members' investments in the High Income Fund despite knowing of the Health Loan's impact on the value of the High Income Fund. Mr. Cameron, in his capacity as director, allowed for the creation and distribution of the MAP Statements, Summary Information, and website, which purported to state that investments made in the Magna Funds were low risk.

82. Mr. Cameron failed to fulfil his duties as director of Chartwell Inc. in acting honestly and diligently in good faith with a view to the best interests of Chartwell Inc., and as the UDP in supervising and promoting activities of Chartwell Inc, that ensured compliance with securities legislation by Chartwell Inc., and is thus personally liable for his tortious actions.

b) Under the heading Breach of Fiduciary Duties:

90. Mr. Cameron, as director of Chartwell Inc., owed a fiduciary duty [to] the Plaintiff and the Class Members to act in good faith and with a view to the best interests of the company. Mr. Cameron breached this duty by making false representations to the Plaintiff and the Class Members regarding the risk and value of their investments in the Magna Funds, which caused the Plaintiff and Class Members to lose significant investments.

c) Under the heading Fraudulent and Negligent Representations:

97. Mr. Cameron, as director of Chartwell, made fraudulent and/or negligent representations to the Plaintiff and the Class Members regarding the value of the Magna Funds in the MAP Statements and the risk objectives of the Magna Funds in the Summary Information Sheet and on the website, as the Magna Funds entailed high risks and the value of the High Income Fund was impacted by the Health Loan. Mr. Cameron, as director, either intended for the Plaintiff and Class Members to act on these representations to invest in the Magna Funds and/or did not take the steps to inform itself of the high risks the Magna Funds entailed.

...

99. By making these representations. Mr. Cameron, as directing mind of Chartwell Inc. was no longer acting in the best interest of the corporation and is personally liable for the tortious conduct.

d) Under the heading Punitive Damages:

107. Mr. Cameron, as director of Chartwell Inc. permitted and helped in the creation and distribution of the MAP Statements and Summary Information Sheets that contained inaccurate risk assessments and valuations of the Magna Funds.

...

111. Mr. Cameron, as director of Chartwell Inc., owed a fiduciary duty [to] the Plaintiff and the Class Members to act honestly and in good faith and with a view to the best interests of the company. Mr. Cameron breached this duty by making false representations to the Plaintiff and the Class Members about their investments in the Magna Funds, which caused the Plaintiff and Class Members to lose significant investments.

[61] Mr. Cameron argues that these amendments which refer to him in his capacity as director of CAM, do not set out sufficient material facts to support an independent cause of action against him. The claim against him in his capacity as director is one that is properly brought against CAM alone, as investment fund manager and portfolio manager of the funds. Mr. Cameron argues that he appropriately left to others – the investment managers and portfolio officers – the carrying out of the regulated activities of CAM. This is a heavily regulated industry that specifically delineates these roles. He submits that there is nothing alleged as to: (i) what Mr. Cameron did outside of his authority as director; (ii) what was tortious in itself, particularly when it comes to the Magna Funds; and (iii) what Mr. Cameron did that could be described as his “own conduct”, apart from CAM’s, due to the parallel allegations made against CAM. Mr. Cameron argues that this is analogous to the situation in *The Owners, Strata Plan No. VIS3578 v. John A. Neilson Architects Inc.*, 2010 BCCA 329 at para. 57, 71-72, where the plaintiffs in that case similarly alleged as against the directors the same duty of care, and the same breaches, all of which caused the same damages as the company. This is the same pleading that was rejected in the Reasons, but now just divided up between Mr. Cameron and CAM. Mr. Cameron further argues that to the extent the pleadings claim he was not acting in the best interests of CAM, there is no claim at common law by a client of a company as against a director for the alleged mismanagement of that company or not acting in the best interests of that company. That is possibly a derivative claim, but Ms. Mackenzie has not made such a claim.

[62] I start by addressing Mr. Cameron's argument that CAM alone was the investment fund manager and portfolio manager of the funds, and that he "appropriately left to others – the investment managers and portfolio officers" the carrying out of the regulated activities of CAM in this regulated industry. That is a merits-based argument that cannot be determined on this application because the pleadings are assumed to be true. It argues against the allegation that Mr. Cameron was wearing two hats – one as financial advisor to his clients whom he was advising to invest in the Magna Funds, and one as director and owner of CAM, the manager of the Magna Funds, and where, contrary to his assertions that he left to others who are licensed the roles of investment advice and management, it is alleged that he was actively involved in providing that advice and managing the Magna Funds.

[63] At paras. 81 and 92 of the Reasons, I identified the two different capacities when I stated, "except in so far as Ms. Mackenzie alleges personal interactions with Mr. Cameron" and "other than what Ms. Mackenzie has alleged with respect to her personal interactions with Mr. Cameron", she had not pleaded an independent cause of action against Mr. Cameron in negligence. Otherwise, the ANOCC simply made "vague and undifferentiated allegations against Mr. Cameron as a director, and CAM".

[64] I turn to the proposed new paragraphs, bearing in mind that CAM can only carry out its activities through its employees, directors and officers. New para. 80, which alleges that Mr. Cameron, as a director of CAM, owed a duty of care to Ms. Mackenzie and the proposed class to make investments with their funds in a way that aligned with their objectives, is the same duty alleged to be owed by CAM at new para. 73. New paras. 81, 90 (to the extent it concerns misrepresentations), 97 and 107, which allege that Mr. Cameron as a director of CAM was negligent by: (i) maintaining investments in the HIF despite knowing of the difficulties with the HIF; and (ii) permitted, helped, or allowed for the creation and distribution of the MAP Statements, Summary Sheets, and the website statements, that contained inaccurate risk assessments and valuations of the Magna Funds; are the same allegations made against CAM at new paras. 74-75, 94-96. Nothing in these pleadings supports a separate identity or interest from that of CAM to make the conduct in his capacity as director independently tortious. New paras. 82, 90 (to the extent it refers to acting in good faith toward CAM), 99, and 111, which allege that Mr. Cameron as director of CAM failed to act in good

faith with a view to the best interests of CAM, are not relevant. This is not a derivative proceeding.

[65] These conclusions do not affect the determination I already made in the Reasons that in the ANOCC, Ms. Mackenzie sufficiently pleads an independent claim against Mr. Cameron based on her personal interactions with him where he provided her with financial advice. These were carved out of the conclusion in the Reasons that no independent claims were pleaded against Mr. Cameron as director of CAM. In other words, there was an independent claim against him for those personal interactions. Those allegations could support a separate identity or interest from that of CAM to make the act or conduct his own and potentially independently tortious. Those allegations are not bound to fail.

[66] In summary, I find that new paras. 81-82, 90, 97, 99, 107, and 111 do not sufficiently plead an independent cause of action against Mr. Cameron, as they simply repeat the allegations against CAM. Leave is not granted for those proposed amendments. However, as discussed in the Reasons, to the extent the ANOCC (and now the FANOCC) pleads personal interactions between Ms. Mackenzie and Mr. Cameron where he provided her with financial advice, those are sufficient to support an independent claim against Mr. Cameron: see para. 91 of the Reasons. I turn to Mr. Cameron's objections to those proposed amendments next.

Amendments concerning Mr. Cameron in his capacity as financial planner

[67] At new para. 36, the FANOCC pleads a narrowed class and class period, and a proposed sub-class of those "who were advised directly by Mr. Cameron regarding their investments in the Magna Funds", as follows:

36. ... All persons in Canada ... who, at any time from 2009 (the inception of the Magna Funds) to 2017, invested with Chartwell Inc. in the Magna Funds. ...

A proposed Sub-Class (the "Proposed Sub-Class") of all persons in Canada ... who, from 2009 (the inception of the Magna Funds) to 2017, invested with Chartwell Inc. in the Magna Funds and who were advised directly by Mr. Cameron regarding their investments in the Magna Funds.

[68] The FANOCC pleads new para. 29, which states "Mr. Cameron was certified by the Financial Planning Standards Council, as a certified financial planner professional from January 1, 1999 to March 31, 2018." New para. 39

pleads the “MAP Statements for the Plaintiff and the Proposed Sub-Class stated that Mr. Cameron was their financial planner”. As reviewed above, the FANOCC makes allegations against Mr. Cameron at new paras. 47-48, 70-71, 76-79, 88-89, and 91-93, and 104 and 110, which specifically refer to him in his capacity as financial planner.

[69] Mr. Cameron argues that to the extent the FANOCC alleges that he is being sued in his capacity as financial planner, these are new causes of action claimed after the expiration of the limitation period. The FANOCC pleads new allegations of fact and new potential bases for liability which are “separate and distinct” from what is already pleaded in the ANOCC. These are argued to be a “major overhaul”.

[70] Ms. Mackenzie argues that she is not pleading any new causes of action. The factual bases and her allegations are the same, and she is merely clarifying the different capacities in which Mr. Cameron is being sued. She has always alleged personal interactions with Mr. Cameron as her financial advisor.

Does the FANOCC raise new causes of action against Mr. Cameron in his capacity as financial planner?

[71] A cause of action is “usually defined as a collection of facts entitling a plaintiff to a remedy”: *Pasquill v. British Columbia (Securities Commission)*, 2025 BCCA 287 at para. 33; *Swiss Reinsurance Company v. Camarin Limited*, 2018 BCCA 122 at paras. 27–28.

[72] In the context of an application to amend, “the limitations issue engages an assessment of the relationship between the original claim and the claim now proposed to be advanced. The necessary analysis focuses on the factual scope rather than the legal theory of the claim”: *Pasquill* at para. 34. This is to be contrasted with a “‘fundamentally different claim’ based on facts not originally pleaded”: *Pasquill* at para. 35. In “assessing for limitation purposes whether a new cause of action is being advanced, the court must ask whether the proposed pleading raises new factual issues”: *Pasquill* at para. 36.

[73] The Court in *Pasquill* confirmed that the law in BC is as described in Morden & Perell, *The Law of Civil Procedure in Ontario*, 2nd ed., (Markham: LexisNexis Canada Ind., 2014) at p. 142:

A new cause of action is not asserted if the amendment pleads an alternative claim for relief out of the same facts previously pleaded and no new facts are relied upon, or amount simply to different legal conclusions drawn from the same set of facts, or simply provide particulars of an allegation already pled or additional facts upon which the original right of action is based.

[74] Finally, it is important to remember that this is not yet a certified class proceeding, and the focus at this stage (and even at the certification stage for the pleadings requirement) is on Ms. Mackenzie's causes of action against Mr. Cameron: *Kwicksutaineuk/Ah-Kwa-Mish First Nation v. British Columbia (Agriculture and Lands)*, 2010 BCSC 1699 at para. 107, rev'd on other grounds 2012 BCCA 193; *Heward v. Eli Lilly & Company*, 2007 CanLII 2651 at para. 10 (Ont. S.C.); *Darmar Farms Inc. v. Syngenta Canada Inc.*, 2019 ONCA 789 at paras. 36–37. It is against Ms. Mackenzie's existing claims in the ANOCC that the FANOCC must be assessed. Whether there is some basis in fact that those claims raise common issues with the proposed class is a different issue.

[75] At paras. 90-91 of the Reasons, I determined as follows:

[90] I turn to duty of care alleged to be owed by Mr. Cameron. There are two aspects to the claim against him. The first concerns his personal interactions with Ms. Mackenzie; the second concerns all the other vaguely pleaded allegations of his "involvement" and "participation" as a director in the acts or omissions of CAM.

[91] Addressing first the personal interactions between Mr. Cameron and Ms. Mackenzie, in my view, it is not plain and obvious that the ANOCC does not plead material facts which could support an investment advisor/client relationship between them of sufficient proximity to give rise to a duty of care. Ms. Mackenzie alleges that Mr. Cameron provided financial investment services through CAM (paras. 1 and 7). She pleads particulars of her interactions with Mr. Cameron and that: he was "her only source of contact"; she communicated her financial objectives to Mr. Cameron; he made assurances to her regarding what the defendants would undertake; and he provided her with investment advice regarding her investments (paras. 10–16). He was the person who advised her to transfer all her funds into the "Conservative Portfolio" as it represented a better balance of risk, and, although not expressly stated, the inference is that Ms. Mackenzie relied on that advice by doing so shortly after. Ms. Mackenzie alleges that Mr. Cameron participated in completion of the KYC Form. These alleged facts can animate the more general allegations of duty of care in paras. 38, 49 and 50. It follows that I also find that Ms. Mackenzie has pleaded a duty of care supporting an independent tort claim against Mr. Cameron arising out of her personal interactions with him.

[Emphasis added.]

[76] In my view, specifically stating in the FANOCC that Mr. Cameron was acting “in his capacity as financial planner” is not raising a new factual basis against Mr. Cameron. The factual scope and the substance of the claims against Mr. Cameron made in the ANOCC and the FANOCC are the same. I have already found that the pleadings were sufficient to support a claim against Mr. Cameron in an “investment advisor/client relationship”. The words “financial planner” used in the FANOCC does not change the substance of the allegations. The allegation is that Mr. Cameron was providing financial advice. The circumstances of that are already pleaded in paras. 5-22 of the ANOCC.

[77] With respect to the claims for negligent misrepresentation, in the Reasons, I found that the ANOCC pleaded material facts that could support a special relationship between Ms. Mackenzie and Mr. Cameron, for the same reasons I found they supported a duty of care for negligence: at para. 100. However, I found the pleadings were deficient in other ways. Nevertheless, the important point here is that the set of alleged factual circumstances that could support a special relationship was again Mr. Cameron’s personal interactions providing financial advice directly to Ms. Mackenzie. The alleged facts which concern the circumstances of the fraudulent misrepresentation claim are the same.

[78] With respect to the claim for breach of contract, although breach of contract was alleged against Mr. Cameron, the ANOCC did not specifically state that when Mr. Cameron was providing financial advice to Ms. Mackenzie, that he was doing so pursuant to a contract. However, the substance of the relationship, one in which Mr. Cameron was giving financial advice, is the same. Whether framed in tort or contract, the factual allegations are already pleaded in the ANOCC – that is, that Mr. Cameron discussed with Ms. Mackenzie her financial circumstances, objectives and risk tolerance, and provided financial investment advice to her based on that. Further, that he did not advise her that the Magna Funds were risky and that the risk increased over time with the problems with the Health Loan. Those are the same allegations made in the FANOCC, but now framed in contract.

[79] I conclude the same with respect to the claim for breach of fiduciary duty. In the Reasons I also found that material facts were not sufficiently pleaded to support an *ad hoc* fiduciary duty. However, the facts which Ms. Mackenzie now pleads in the FANOCC to support this duty are still based on the same factual

circumstances she alleged in the ANOCC. That is, that on the advice of Mr. Cameron she invested her funds with CAM through a Managed Account Program, which gives CAM the discretionary authority over her funds, and in which the client's financial advisor is consulted.

[80] In support of his arguments that the ANOCC never pleaded a claim against Mr. Cameron as financial planner, Mr. Cameron argues that the ANOCC does not mention the Chartwell Financial Group through which Mr. Cameron operated as a certified financial planner, and that the ANOCC referred to Mr. Cameron and all the other former defendants in their roles at CAM. That is true, however, it does not detract from the fact that the ANOCC also pleads that: the defendants "provided financial investment services and/or financial planning services (para. 1); the defendants "are directly connected as financial planners, investment advisors, and, or related, parent or wholly-owned subsidiary investment companies" (para. 23); and most importantly, that Ms. Mackenzie separately pleaded her direct personal interactions with Mr. Cameron, which I found was a sufficient pleading to support an "investment advisor/client relationship". It is also true, as argued by Mr. Cameron, that the former proposed class definition was those who invested with CAM, with the possibility of a sub-class which did not specifically mention those who had direct dealings with Mr. Cameron. However, in my view, that does not indicate an intention to eliminate a claim by those who did have a direct relationship with Mr. Cameron. The fact that Ms. Mackenzie pleaded her personal interactions with Mr. Cameron indicates otherwise.

[81] In summary, I do not find that the allegations against Mr. Cameron in his capacity as financial planner raise new causes of action. As a result, Mr. Cameron has not suffered prejudice by reason of the loss of a limitation defence.

Are the amendments necessary to determine the real question in issue between the parties?

[82] In my view, the answer to this is clearly yes. The allegations of Ms. Mackenzie are that Mr. Cameron was wearing two hats and had information from wearing two hats. To ignore this would be to distort the fact finding process. It is fundamental to the real questions in issue between Ms. Mackenzie and Mr. Cameron.

What is the extent of connection between the existing claims and these proposed claims?

[83] Mr. Cameron argues the FANOCC amendments concerning Mr. Cameron in his capacity as financial planner do not directly relate to those raised in the ANOCC. For the reasons above, I do not agree. Ms. Mackenzie is not alleging an entirely new theory of liability against Mr. Cameron. The claims in the ANOCC and the amendments in the FANOCC are intimately related because they are based on the same factual circumstances.

What is the extent of the delay?

[84] The relevant period for delay is from the expiry of the limitation period plus one year for service of the notice of civil claim, to the date leave is sought: *Amezcuca v. Taylor*, 2010 BCCA 128 at para. 42. In this case, Mr. Cameron argues that the latest the limitation period commenced was in September 2017 when Ms. Mackenzie made a complaint against him to FP Canada. This means the date from which delay is measured is September 2020. The delay is therefore over four years.

[85] Mr. Cameron argues that there has been extensive delay in bringing this application. Mr. Cameron refers to *Giacomini Consulting Canada Inc. v. The Owners, Strata Plan EPS 3173*, 2023 BCCA 473 at para. 31, a case concerning the test for dismissal for want of prosecution, where the Court underlined that “unreasonable delays in civil proceedings cause systemic harm in undermining public confidence in the justice system”. Mr. Cameron refers to *Chouinard* at para. 28, which described an application to add new causes of action against existing defendants 5.5 years after the causes of action arose and 3.5 years after the limitation period expired, as “extensive”. Mr. Cameron also refers to *Ningbo Zhelun Overseas Immigration Service Co. Ltd. v USA-Canada International Investment Inc.*, 2024 BCSC 682, where Justice Morley held that an *unexplained* delay of 6.5 years was sufficiently serious that the application should not be allowed in the circumstances of that case. Mr. Cameron argues that given the passage of time in this case, prejudice from delay to him can be presumed. Although he argues that the limitation period commenced at the latest in September 2017, he also points out that the events which concern the allegations date back to as early as 2010, and memories fade.

[86] I find that there has been a long period of delay from September 2020. I also acknowledge that some of the events of this lawsuit go back to 2010. However, the allegations are that it was the defendants' own wrongdoing that resulted in Ms. Mackenzie not knowing that she had a claim; that is, that CAM and Mr. Cameron did not advise Ms. Mackenzie and the proposed class of the risks, in particular the difficulties with the HIF, and misrepresented the value of the funds. As a result, the losses were not discovered until 2017.

What is the explanation for the delay?

[87] Mr. Cameron submits that neither Ms. Mackenzie nor her counsel has provided a reasonable explanation for the delay in bringing this application. He submits that the ANOCC pleadings were intentionally vague and a deliberate tactical decision by Ms. Mackenzie's counsel. This application is not the result of mere inadvertence by Ms. Mackenzie or her counsel. Further, these amendments could have been sought sooner, especially after Mr. Cameron filed his certification response materials. This ought to weigh heavily against the amendments being permitted.

[88] Ms. Mackenzie submits there was no delay because the claim was always present regarding her personal dealings with Mr. Cameron as her financial advisor. Further, Ms. Mackenzie's counsel argues that they were not doing nothing between the time the NOCC was filed, and the certification application was heard. In that time, they investigated and negotiated with counsel for the former named defendants, resulting in discontinuances, and they narrowed the claims to Mr. Cameron and CAM.

[89] To my mind, there are two types of delay. The first is the delay up until before the certification application. The ANOCC was poorly drafted. In general, it was too vague. However, I have also found that the factual circumstances regarding Ms. Mackenzie's personal interactions with Mr. Cameron were pleaded and were sufficient to support an independent claim against him as a financial advisor. I cannot find that Ms. Mackenzie and her counsel intentionally made a vague claim against Mr. Cameron concerning her personal interactions with him, for an improper purpose. The facts underlying the proposed amendments to the FANOCC concerning Mr. Cameron in his capacity as financial planner have not changed. I also accept Ms. Mackenzie's counsel submission that they were negotiating with other counsel and narrowing the claims. The second is the delay

once the certification application was set down. As noted in the Reasons at para. 172, Ms. Mackenzie's counsel advised that the pleadings were initially broadly drafted because they did not know how the claim would evolve as they were contacted by proposed class members. In my view, while that may be understandable at the very beginning, it was not an excuse once the certification application was set down and the defects in the pleadings were pointed out to Ms. Mackenzie's counsel. There is unexplained delay once the certification application materials were exchanged. There is no evidence that these delays were the result of a decision by Ms. Mackenzie. Rather, her counsel acknowledges these were the decisions of counsel.

[90] Finally, because this was raised at the hearing of this application, I note that I subsequently reviewed the written arguments and re-listened to portions of the oral submissions of counsel at the certification hearing. While Mr. Cameron asserted that he was being sued in his capacity as a director only, counsel for Ms. Mackenzie asserted that Mr. Cameron was being sued in his capacity as financial planner as well as his capacity as a director of CAM. While it is what the pleadings state, rather than what was intended, which is important, the intention of Ms. Mackenzie's counsel is relevant with respect to Mr. Cameron's argument that counsel strategically vaguely pleaded allegations.

What is the degree of prejudice caused by the delay?

[91] Given my conclusions above, I do not find that there is any prejudice to Mr. Cameron in the form of an accrued limitation defence. Mr. Cameron does not allege other prejudice other than the presumed prejudice of fading memories from the passage of time. Mr. Cameron does not assert a loss of documents or a loss of witnesses that would cause prejudice to his ability to defend the case, which is the type of prejudice that is relevant to this application: *Chouinard* at para. 23. The certification application has not been concluded.

Other Factors

[92] Mr. Cameron submits that what is "just and convenient" should be considered within its full context, and that it is appropriate to consider whether the amendments sought have any prospect of permitting the Court to certify common issues. He submits that certification is bound to fail regarding these proposed amendments, and they will have no impact on the proposed class members'

claims. These amendments should be refused to avoid the unnecessary time and expense to the Court and to the parties associated with any further attempts to certify an uncertifiable claim. The allegations against him as financial planner have no prospect of being certified as the issues will be inherently individual, those issues will overwhelm any common issues, and a certified class proceeding will not be manageable nor the preferable procedure. He submits that effectively, the Court already rejected Ms. Mackenzie's position that any parts of these causes of action could be certified (see Reasons at paras. 157-166). He submits that given the unique nature of each proposed class member's claim, these claims should be brought as individual claims.

[93] In my view, this application is not the time to consider and determine Mr. Cameron's arguments above. This application concerns amendments only. The proper time to consider Mr. Cameron's arguments as to whether there are common issues, and whether a certified proceeding is the preferable procedure, is at the certification hearing. In the Reasons, I pointed out the individualized nature of and difficulties with many of the then alleged common issues that had been proposed, but I also acknowledged the possibility of crafting common issues with very narrowed claims.

Overall is it just and convenient to permit the amendments?

[94] Weighing all the above, I find that it is just and convenient to grant leave for the amendments which concern claims against Mr. Cameron in his capacity as financial planner. The amendments are necessary to fairly determine the real issues in dispute between the parties. No new facts or causes of action have been pleaded by Ms. Mackenzie, although now they have been completely pleaded. While there has been delay, and some of it is unexplained, I do not find any significant prejudice to Mr. Cameron's ability to defend the claim. On the other hand, there would be significant prejudice, particularly to the proposed class, if the amendments were not permitted.

[95] In considering what is just and convenient, I have also considered the significant interests at stake and the objects of class proceedings, and I repeat my conclusions from the Reasons:

[174] I have also considered the objectives of class proceedings, and in particular access to justice. Ms. Mackenzie and the proposed class have significant interests at stake. Ms. Mackenzie states that she lost over \$200,000, her retirement savings. Others in the proposed class may have

as well. The seven people who complained to the FPCSC are stated to have lost \$1 million. In my view her interests and those of the proposed class should not be prejudiced because of what is essentially, at this stage, a pleadings problem, where there are potential viable claims which have been identified, that could be pleaded.

Amendments concerning Mr. Cameron as UDP

[96] New para. 29 of the FANOCC pleads that Mr. Cameron was the UDP for CAM from January 5, 2010 to February 7, 2018. At new para. 82, the FANOCC pleads that Mr. Cameron failed to fulfill his duties “as the UDP in supervising and promoting activities of [CAM] that ensure compliance with securities legislation by CAM”.

[97] Mr. Cameron argues that the allegations at para. 82 are bare legal conclusion, and they are new. There are no material facts pleaded: (a) to show how a duty of care to Ms. Mackenzie and the proposed class would arise from this position; (b) setting out the standard of care that would apply to a UDP in the circumstances; (c) what Mr. Cameron did or did not do that constituted a breach of that standard of care; and (d) that any such alleged breach caused loss. Moreover, to the extent the allegation is that Mr. Cameron failed to fulfill a duty as UDP under the *Securities Act*, R.S.B.C. 1996, c. 418, or the *National Instrument 31-103*, B.C. Reg. 209/2023, such allegation does not disclose a cause of action as it would amount to an allegation of the nominate tort of statutory breach, which has been rejected: *The Queen (Can.) v. Saskatchewan Wheat Pool*, [1983] 1 S.C.R. 205. While a breach of an Act may be evidence of negligence, it does not base a cause of action. There is no cause of action at common law to enforce statutorily conferred rights except when on a construction of the legislation as a whole, the court concludes the legislators intended that statutorily conferred rights can be enforced by civil action: *Sandhu v. HSBC Finance Mortgages Inc.*, 2016 BCCA 301 at paras. 94-104. Further, there is no private law civil cause of action purely out of a breach of securities legislation: *Sharp v. Royal Mutual Funds Inc.*, 2021 BCCA 307 at paras. 67-81.

[98] I do not need to address all of these arguments. Mr. Cameron’s concerns at this hearing were largely resolved with Ms. Mackenzie counsel confirming that they are not advancing a separate cause of action based on Mr. Cameron’s activities or omissions as UDP. Ms. Mackenzie is arguing that Mr. Cameron’s role as UDP is one factor that informs the standard of care required of him.

[99] In response, Mr. Cameron submits that if Ms. Mackenzie is arguing that Mr. Cameron being the UDP is relevant to the standard of care then she should plead that and set out how exactly it is relevant and what duties she is alleging arise from that.

[100] I agree with Mr. Cameron. If the allegation is that Mr. Cameron's obligations as UDP are relevant to the standard of care required of him, then that should be specifically pleaded, how it is relevant, and what duties arise from it. I therefore do not allow new paras. 29 and 82 but give leave for Ms. Mackenzie to apply to amend to plead allegations consistent with her submissions regarding the UDP allegations at this hearing. I will address that at our next case management conference.

Amendments concerning the two disciplinary proceedings

[101] At new paras. 54-59 of FANOCC, Ms. Mackenzie pleads that Mr. Cameron made certain admissions in the Financial Planning Standards Council and BC Securities Commission disciplinary proceedings. Those paragraphs state:

54. On or about September 25, 2017, the Plaintiff filed a complaint against Mr. Cameron to the Financial Planning Standards Council, regarding her investments in the Magna Funds.

55. On or about October 13, 2021, the FP Canada Standards Council Discipline Hearing Panel conducted a written hearing to consider allegations of misconduct against Mr. Cameron. FP Canada accepted a joint settlement agreement (the "FPC Settlement Agreement") between FP Canada and Mr. Cameron.

56. In the FPC Settlement Agreement, Mr. Cameron admitted that he failed to recommend only those strategies that were prudent and appropriate for at least 7 of his clients. Specifically, he recommended strategies to these clients whose objectives, personal circumstances and investment knowledge did not support such strategies. Mr. Cameron also admitted that he failed to adequately disclose the level of risks of investing in a portfolio of mutual funds (the Magna Funds) and the increasing level of risk, of these investments over time, to at least 7 of his clients.

57. On or about February 17, 2022, the British Columbia Securities Commission and Mr. Cameron entered into a settlement agreement ("BCSC Settlement Agreement").

58. Chartwell Inc, advanced 5 million USD to Health Capital between March 2010 to March 2011, and from 2010 to 2016, the Health Loan comprised a large proportion of the High Income Fund's investments. In or around 2014, Health Capital stopped making timely interest payments.

59. In the BCSC Settlement Agreement, Chartwell Inc and Mr. Cameron, agreed that from 2010 to 2016, Chartwell Inc, did not have sufficient information about Health Capital to support its calculation of the value of

the High Income Fund, as Health Capital stopped providing reporting documents in a timely manner in 2010 and stopped providing reporting documents altogether in 2012. Chartwell Inc, and Mr. Cameron agreed that Chartwell Inc, did not reassess the value of the High Income Fund, despite there being risk indicators related to the Health Loan, such as missed or late interest and principal payments by Health Capital to Chartwell Inc.

[102] Mr. Cameron argues that these proposed amendments ought to be denied, as improperly pleaded evidence. Ms. Mackenzie is agreeable to amending these pleadings further to simply allege the conclusions to which Mr. Cameron agreed.

[103] Rule 3-7(1) states that a pleading must not contain the evidence by which the facts alleged in it are to be proved. In my view, Ms. Mackenzie's proposal is appropriate, and I do not allow the amendments at paras. 54, 55 and 57 but grant leave to the amendments at paras. 56 and 58, except to the extent that the alleged facts refer to Mr. Cameron making admissions. If counsel cannot agree on the deletions required, this can be addressed at our next case management conference.

Summary

[104] In summary, leave is granted for the amendments in the FANOC except for the following:

- a) new paras. 81-82, 90, 97, 99, 107, and 111 which concern Mr. Cameron in his capacity as director of CAM;
- b) new paras. 29 and 82 which concern Mr. Cameron acting as a UDP, but with leave to apply to amend at the next case management conference; and
- c) new paras. 54, 55, and 57 which concern the disciplinary proceedings, but with leave to apply to address this at the next case conference if counsel cannot agree on the deletions required.

“Norell J.”