

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bobb v. Hobart*,
2024 BCSC 1737

Date: 20240919
Docket: S247326
Registry: New Westminster

Between:

Shawn Jason Bobb, on his own behalf and his individual capacity as a member of the Spuzzum Indian Band (also known as Spuzzum First Nation)

Plaintiff

And

James Victor Hobart, also known as James Liam Victor, in his personal capacity and in his representative capacity as Chief of the Spuzzum First Nation and Diana Stromquist, in her personal capacity and in her representative capacity as Councillor of the Spuzzum First Nation

Defendants

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

The Plaintiff, appearing in person:	S. Bobb
Counsel for the Defendants:	C. Cheng C. Russell
Place and Date of Hearing:	New Westminster, B.C. August 22, 2024
Place and Date of Judgment:	New Westminster, B.C. September 19, 2024

INTRODUCTION

[1] The issue raised on this application relates to the appropriateness of the pleadings of the plaintiff, Shawn Bobb.

[2] The defendants seek to strike Mr. Bobb’s pleading and dismiss the action in its entirety. The defendants also seek special costs.

BACKGROUND

[3] All of the parties are members of the Spuzzum Indian Band, also known as Spuzzum First Nation (“SFN”).

[4] While Mr. Bobb is self-represented in this action, he is also a practicing lawyer, having been called to the bar in 2003.

[5] SFN is a “Band” under the *Indian Act*, R.S.C. 1985 c. I-5 [*Indian Act*]. Members include individuals living on- and off-reserve land and other communities or Bands in BC’s Fraser Canyon area. The SFN is governed by its Council, currently comprised of one Chief and two Councillors.

[6] The defendant, James Hobart, previously served as SFN’s Chief from 2012-2016 and 2018-2022. In 2022, Mr. Hobart was re-elected as Chief and is currently serving a four-year term in that position. The defendant, Diana Stromquist, is currently one of SFN’s Councillors, having been re-elected in June 2024 (referred to with Chief Hobart as the “Defendants”).

[7] The second Councillor is Angela Mitchell, who is not named in this action.

[8] Mr. Bobb is part of a large family in SFN, many of whom have previously held positions as Chief or Councillor of SFN. The Defendants refer to previous disputes or issues that arose while members of the Bobb family served on SFN’s Council, such as contentious meetings, allegations of misappropriation of Band assets and a significant increase in the Band’s debt.

[9] It appears that much of the current dispute between Mr. Bobb and the Defendants concern SFN's election for chief in 2022. The candidates included Mr. Bobb's father and Chief Hobart, with the latter being successfully elected Chief.

[10] Mr. Bobb appealed the election results to the Appeal Board (the "Board"). The Board did find some violations of the Election Code, but determined that it did not affect the outcome of the results. Mr. Bobb was not satisfied. He then applied for judicial review in the Federal Court of Canada (the "FCC"). Mr. Bobb's allegations on the judicial review included that there were irregularities in the nomination meeting to confirm Mr. Hobart as Chief and electoral misconduct by the Defendants. Mr. Bobb also alleged that errors were committed by the Board, which errors were allegedly directed, authorized, or acquiesced to by the Defendants and SFN's administrator, Crystal Hatzidimitriou (the "Administrator").

[11] The FCC has not yet issued a decision on the judicial review.

[12] On January 12, 2023, this action began when Mr. Bobb filed a notice of civil claim ("NOCC").

[13] In late 2023, the Defendants applied to strike the NOCC or, in the alternative, for an order that Mr. Bobb be allowed some time to provide particulars of his claim as to the factual basis or material facts alleged.

[14] On February 2, 2024, the Defendants' application came before Justice Gibb-Carsley. As a result, the Court ordered that, within 45 days, Mr. Bobb was to deliver further and better particulars of certain portions of the NOCC (both the factual basis and legal basis) (the "Order"). One particular claim was struck.

[15] On March 18, 2024, Mr. Bobb filed an amended notice of civil claim ("ANOCC"), which pleading is the subject of this application.

GIBB-CARSLEY J.'S ORDER

[16] Mr. Bobb was required by the Order to provide particulars of portions of the NOCC under the "Statements of Facts":

- a) Para. 13: various duties said to be owed by the Chief and Council to SFN members;
- b) Paras. 15, 17-19: that the Defendants had breached their fiduciary duties to SFN and its members, engaged in unlawful conduct, and caused injury and loss to SFN members through misfeasance in public office;
- c) Paras. 20-21: the “particulars” of this conduct, which included a lengthy list of other alleged misdeeds, such as conspiracy, failure to consult, conflict of interest, concealment of information; obtaining SFN funds; and, ignoring the wishes of SFN members and the relevant policies and procedures; and
- d) Paras. 22-23: the wrongful, arbitrary and malicious conduct that was vindictive, callous and high-handed and offended the moral standards of the SFN community, sufficient to warrant punitive damages.

[17] Mr. Bobb was also required by the Order to provide particulars of the “Legal Basis” in the NOCC, which only generally referred to the *Indian Act*, SFN’s Election Code, the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, the *Negligence Act*, R.S.B.C. 1996, c. 333, the torts of breach of fiduciary duty and misfeasance in public office and “common law principles”.

THE STRIKE APPLICATION

[18] The ANOCC can hardly be described as a rehabilitation of the NOCC. In fact, it is a wholesale redrafting of the allegations with expansive additional allegations with the same or elevated import. It is unclear to me whether the additional allegations relate to the 2024 election of the Councillors, which is the subject to another appeal to the Board filed by Mr. Bobb in July 2024.

[19] More to the point, the Defendants allege that the same deficiencies exist as they did with the NOCC and that the “new” allegations suffer from the same lack of detail as did the earlier NOCC.

[20] The Defendants rely on the *Supreme Court Civil Rules*, R. 9-5(1). In particular, they challenge the ANOCC on three major grounds:

- a) The ANOCC does not disclose a reasonable claim because Mr. Bobb does not plead material facts or particulars: R. 9-5(1)(a);
- b) The ANOCC is an abuse of process, due to the duplicate and parallel FCC judicial review of the 2022 election: R. 9-5(1)(d); and
- c) Mr. Bobb does not have standing or authority to commence this action, purportedly as a representative action, on behalf of SFN or its members, to enforce any alleged collective rights: R. 20-3.

[21] The authorities that govern this application concerning the striking of pleadings under the first ground are well-known and not in dispute. In particular, the pleadings are assumed to be true as plead and no evidence may be considered: R. 9-5(1)(a); R. 9-5(2). The deficiencies of the pleading must be “plain and obvious” on its face.

[22] I briefly canvas Mr. Bobb’s objectives as stated in his response to application (the “Response”) and in his oral submissions. I then address the Defendants’ challenges to the ANOCC.

Mr. Bobb’s Stated Objectives re the ANOCC

[23] Mr. Bobb’s overall objectives provide important context to the resolution of the issues in this application.

[24] Mr. Bobb does not sugar coat his view of the Defendants who he describes as “corrupt”. Indeed, this submission is consistent with the seriousness of the allegations in the ANOCC. Mr. Bobb has repeated some or all of these allegations in various social media posts, referring to Mr. Hobart “pretending” to be a leader, followed by the phrase “election fraud”.

[25] In his Response, Mr. Bobb refers to having sought document disclosure from SFN for years. He speaks of asking for documents from the Administrator, who he alleges is controlled by the Defendants and who have stopped her from providing those documents. He also refers to being rebuffed by SFN's legal counsel as to his request for information and documentation. Mr. Bobb has delivered a list of documents. He has also filed an application seeking a pre-trial examination of the Administrator under R. 7-5(1), which the Defendants opposed until the pleadings issue is resolved and the Administrator opposed as premature and not appropriate in any event.

[26] The overall import of Mr. Bobb's claim is that he has made significant efforts to obtain information and documentation as to the governance of SFN. He says that he is using this litigation to obtain what he describes as "critical documents and information", which he says the Defendants have deliberately withheld from him.

[27] The Defendants in turn argue that Mr. Bobb's ANOCC is nothing more than a vehicle to engage in a fishing expedition to obtain disclosure of the documents and information from SFN that he has been seeking for some time. They also say that this litigation would, if allowed to proceed, given rise to essentially a general "public inquiry" to be conducted by Mr. Bobb of SFN's affairs and its governance over many years. The Defendants allegations are, to a degree, supported by the ANOCC itself, where it states:

124. [Mr. Bobb] was forced to bring this claim, in part, to obtain disclosure that ought to have already been provided by the Defendants.

[28] In my view, the Defendants characterization of Mr. Bobb's litigation is accurate. In argument, Mr. Bobb said that he wanted to proceed with this litigation because "maybe we find something". Indeed, Mr. Bobb's approach was supported by his submissions on this application in response to those of the Defendants as to the specifics of the ANOCC. It is significant that Mr. Bobb did not feel the need to refer to his pleading at all in his submissions; in fact, his only reference to the ANOCC was to point to a minor paragraph (para. 28(h)) in response to a query by

the Court as to what material facts supported one of his allegations (the breach of fiduciary duty).

[29] Beyond that, Mr. Bobb (albeit misguided) appears to view the ANOCC as a mere “step” that must be completed before he embarks on his true mission of wholesale discovery and investigation of SFN’s affairs by the Defendants over the past years.

Are Reasonable Causes of Action Disclosed?

[30] Rule 3-1(2)(a) directs that the ANOCC must set out a “concise statement of the material facts giving rise to the claim”. Material facts are “essential to formulate a complete cause of action. If a material fact is omitted, a cause of action is not effectively pleaded”: *Young v. Borzoni*, 2007 BCCA 16 at para. 20.

[31] The object and function of pleadings was discussed by Justice Voith, as he then was, in *Sahyoun v. Ho*, 2013 BCSC 1143:

[16] The new Rules alter the structure in which pleadings are to be prepared. The core object of a notice of civil claim, however, remains the same. That object is concisely captured in Frederick M. Irvine, ed., *McLachlin and Taylor, British Columbia Practice*, 3rd ed., vol. 1 (Markham, Ont.: LexisNexis Canada Inc., 2006) at 3-4 - 3-4.1:

If a statement of claim (or, under the current Rules, a notice of civil claim) is to serve the ultimate function of pleadings, namely, the clear definition of the issues of fact and law to be determined by the court, the material facts of each cause of action relied upon should be stated with certainty and precision, and in their natural order, so as to disclose the three elements essential to every cause of action, namely, the plaintiff’s right or title; the defendant’s wrongful act violating that right or title; and the consequent damage, whether nominal or substantial. The material facts should be stated succinctly and the particulars should follow and should be identified as such...

[17] These requirements serve two foundational purposes: efficiency and fairness. These purposes align with Rule 1-3 which confirms that “the object of [the] Supreme Court Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits.”

[18] I emphasize efficiency because a proper notice of civil claim enables a defendant to identify the claim he or she must address and meet. The response filed by a defendant, together with the notice of civil claim and further particulars, if any, will confine the ambit of examinations for discovery and of the issues addressed at the trial itself. Proper pleadings limit the

prospect of delay or adjournments. They allow parties to focus their resources on those matters that are of import and to ignore those that are not. They facilitate effective case management and the role of the trier of fact.

[19] A proper notice of civil claim also advances the fairness of pre-trial processes and of the trial. Defendants should not be required to divine the claim(s) being made against them. They should not have to guess what it is they are alleged to have done.

[20] In *Keene v. British Columbia (Ministry of Children and Family Development)*, 2003 BCSC 1544, 20 B.C.L.R. (4th) 170, Justice Parrett confirmed that the essential purpose of pleadings is to define the issues, giving the opposing parties notice of the case they have to meet and to provide the “boundaries and the context for effective pre-trial case management, the extent of disclosure required, as well as the parameters or necessity of expert opinions” (para. 27).

[32] The distinction between required material facts and particulars was discussed in *Sidhu v. Hiebert*, 2018 BCSC 401:

[36] Material facts are distinct from particulars. A material fact is one that is essential in order to formulate a complete cause of action. Particulars are information which allow a party to understand the case he or she must meet. The distinction was discussed in *Sahyoun* at paras. 25 and 27:

[25] A material fact is one that is essential in order to formulate a complete cause of action. If a material fact is omitted, a cause of action is not effectively pled. The foregoing definition of “material fact” was specifically approved by the Court of Appeal in *Skybridge Investments Ltd. v. Metro Motors Ltd.*, 2006 BCCA 500 at para. 9, 61 B.C.L.R. (4th) 241, and in *Young v. Borzoni*, 2007 BCCA 16 at para. 20, 64 B.C.L.R. (4th) 157. That same definition was also referred to and applied by judges of this court in *Budgell v. British Columbia*, 2007 BCSC 991 at para. 8, and in *Micka v. Oliver & District Community Economic Development Society*, 2008 BCSC 1623 at para. 9.

...

[27] At the same time, though the distinction can be difficult to apply, material facts are not particulars. In *McLachlin and Taylor* at 3-6, the authors state:

There is a distinction between material facts and particulars. A material fact is one that is essential in order to formulate a complete cause of action. If a material fact is omitted, a cause of action is not effectively pleaded. Particulars, on the other hand, are intended to provide the defendant with sufficient detail to inform him or her of the case he or she has to meet. Particulars are provided to disclose what the pleader intends to prove.

[37] There is a difference between material facts, allegations, particulars, and evidence, which was described by the Court of Appeal in *Cansulex* at para. 11:

Those decisions delineate the difference between what is properly the subject matter of a Demand for Particulars and what is more properly the subject matter of a Demand for Discovery or material that should be obtained on an Examination for Discovery. At the heart of the distinction between the two lies the question whether the material demanded is intended to, and does, delineate the issues between the parties, or whether it requests material relating to the way in which the issues will be proved.

[Emphasis added.]

[33] See also *FORCOMP Forestry Consulting Ltd. v. British Columbia*, 2021 BCCA 465 at paras. 24-30.

[34] The authorities are clear that a party is not allowed to plead only very generally so as to be able to conduct discovery toward possibly finding facts that support that allegation: *Sidhu* at paras. 45-48; *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at paras. 22-25; *Sekhon v Canada (Attorney General)*, 2019 BCSC 1164 at para. 8. No “fishing expeditions” are allowed simply by starting an action with only very generalized allegations: *Proconic Electronics Ltd. v. Wong*, [1985] B.C.J. No. 2863 (S.C.) at para. 9.

[35] As discussed in the case law, the pleadings form the foundation of the litigation and define the scope of discovery (both documentary and oral) as a matter of fairness to the other party and also, trial efficiency. Discovery is not allowed to proceed simply on the basis that the plaintiff *may* discover some facts through discovery and *then* seek to amend the pleading.

i) Amendments to the Notice of Civil Claim

[36] The ANOCC is an extensive document but the changes and additions to the Statement of Facts can be generally summarized as follows, in that Mr. Bobb has:

- a) deleted portions of the NOCC (paras. 13, 15, 17-23) that were to be particularized under the Order;

- b) advanced new allegations about the Defendants' preference and control, including over the Administrator, regarding the membership and document disclosure, said to a "breach of duties" (paras. 21-27, 69, 118-125);
- c) set out new alleged duties owed to the Band and SFN members (para. 28);
- d) alleged certain "traditional laws" and alleged violations of those laws (paras. 30-39);
- e) referred to the election process under the Election Code and appeals to the Board (paras. 40-71) and then a variety of other matters:
 - i. that the Defendants directly or indirectly manipulated and influenced the Board (para. 59);
 - ii. that Councillor Stromquist knew that Chief Hobart had breached the Election Code in a conspiracy to maintain power and control of SFN for personal gain and benefit (para. 63);
 - iii. that the Defendants acted "in a concerted effort" (para. 66);
 - iv. alleged various breaches of the Election Code, such as committing "unlawful acts", acting against the best interests of SFN members and failing to protect SFN traditional territory (para. 71);
 - v. that the Administrator was manipulated and controlled by the Defendants in relation to the 2022 election (paras. 80-87); and
 - vi. that the Defendants conspired with each other and the Administrator and other "cohorts" to manipulate and control the outcome of the 2022 election (paras. 91-114).

- f) Referred to the *First Nation Financial Transparency Act*, S.C. 2013 c. 7 [FNFTA] and alleged that the Defendants have failed to comply with its provisions in breach of the FNFTA and its duties to SFN members;
- g) Repeated allegations of conduct on the part of the Defendants that were earlier contained in para. 20 of the NOCC (which was ordered to be particularized in the Order) (para. 76) and which are then said to be wrongful conduct, breach or unlawful conduct, said to be arbitrary, malicious, vindictive, callous and high-handed, causing harm to SFN member (paras. 77-79);
- h) Alleged control over the membership in a conspiracy to exploit SFN resources for their own benefit (paras. 88-90);
- i) Alleged that the Defendants ostracized Councillor Mitchell to control and make decision as a Council (paras. 115-117); and
- j) Alleged lack of consultation and withholding of information from SFN members, including a refusal to accept any “accountability” (paras. 126-132) and making significant decisions without consultation (paras. 133-152).

[37] The relief sought by Mr. Bobb in the ANOCC has also been substantially recast and expanded beyond the NOCC. The allegations of conspiracy, violation of “traditional laws”, breach of fiduciary duty, misfeasance of public office and breach of the Election Code remain. In addition to damage awards for SFN members, Mr. Bobb seeks an order that the Defendants be removed from Council and various injunctions preventing them from acting in their official capacities. Finally, the relief sought includes repayment of misappropriated funds and tracing remedies.

[38] Rule 3-1(2)(c) directs that the ANOCC must set out a “concise summary of the legal basis for the relief sought”. Following from the Order, Mr. Bobb has expanded the Legal Basis in the ANOCC at paras. 175-204 to refer to various

statutes and common law causes of action, all of which depend on the facts said to be summarized in Part 1.

ii) Inadequacy of material facts in the Amended Notice of Civil Claim

[39] Having considered the submissions on this application and considering the ANOCC in detail, I agree that Mr. Bobb has failed or refused to set out any material facts or sufficient particulars giving rise to his claims. Even assuming the facts asserted in the NOCC to be true, Mr. Bobb’s allegations amount only to speculation and bald conclusory allegations and do not amount to a “reasonable claim”.

[40] I do not agree with Mr. Bobb that the particulars which were to be provided under the Order and which are now lacking, as asserted by the Defendants, are “evidence” that are not to be contained within a pleading: R. 3-7(1).

[41] Specifically, the ANOCC also fails to identify or particularize:

- a) Who is allegedly harmed?: Mr. Bobb identifies multiple groups and subgroups throughout the ANOCC, including Spô’zêm, Spô’zêm People, SFN, SFN Members, Elders and Matriarchs. He has failed to not only define these groups, but also to identify which ones are allegedly harmed by which cause of action advanced;
- b) What are the harms allegedly sustained?: For example, Mr. Bobb alleges that the Defendants violated traditional laws, but does not identify any losses arising from any breach. He contends that the Defendants failed to respect the “Elders” and “Matriarchs”, but he does not identify any recognized compensable damages. He alleges that the Defendants misappropriated “revenue moneys”, but does not particularize which moneys were allegedly misused. He contends that the Defendants “exploited” the “vulnerabilities” of the Spô’zêm people arising from the effects of Canada’s laws and policies, but does not particularize what the loss is; and

- c) When did these breaches or violations take place?: Again, Mr. Bobb only makes broad allegations that unspecified wrongdoing occurred, but does not particularize even a year or approximate period *when* such conduct allegedly took place or was discovered by him. Other than regarding the 2022 Election, Mr. Bobb provides no information regarding when the alleged losses occurred or were discovered, and no facts to assess when or whether the limitation period has expired. Mr. Bobb makes only two vague references to time – “since prior to 2020” – alleging unspecified conduct (control of the membership list and voters list) and conspiracy to ensure SFN proposals bear personal profit and gain (paras. 25 and 88).

iii) Alleged violations of traditional laws

[42] The Defendants also specifically address Mr. Bobb’s allegations that they have “violated traditional laws and caused damage...to Spô’zêm, SFN, SFN members including [Mr. Bobb]”. Those alleged traditional laws are set out in paras. 30-37. The “specifics” of the violations of those laws are set out in the ANOCC at para. 38. For example, Mr. Bobb vaguely alleges that the Defendants: failed (d) “to follow the voice and views of the collective” and (e) and (f), failed “to respect” Elders or Matriarchs, (k) intentionally tried “to minimize the voice of specific groups of people” and (m) took advantage of people in vulnerable situations.

[43] Firstly, the Defendants argue that Mr. Bobb has failed to advance a justiciable claim in this respect, referring to *Kelly v. Canada (Attorney General)*, 2013 ONSC 1220 at para. 148. I agree that, given how Mr. Bobb’s claim has been framed, this Court’s competence is called into question as to the determination of what are the relevant Indigenous “traditional laws” that apply to SFN, which are alleged to be recognized and protected under the *Constitution Act, 1982*. The same comment applied to SFN’s specific community norms and self-governance, as alleged by Mr. Bobb.

[44] If Mr. Bobb’s approach in advancing his claim is one requiring the Court to recognize Indigenous law as governing the internal affairs of SFN, a band under the

Indian Act, he must provide a reasonable definition of those rights he asserts. However, the ANOCC is unclear as to whether Mr. Bobb is claiming a right within the meaning of s. 35 of the *Constitution Act, 1982* or some other kind of right. Either way, Mr. Bobb has provided no clarity as to what right he is claiming.

[45] *Lax Kw'alaams Indian Band v. Canada (Attorney General)*, 2011 SCC 56 at para. 45 stands for the proposition that a defendant should not be left in any doubt as to what Aboriginal right is being asserted. Further, the Court in *Lax Kw'alaams* at para. 40 specifically stated that a “commission of inquiry” approach was not suitable in civil litigation where the “first step” must be characterization of the claim. The Court rejected this approach for three reasons:

41 ... Firstly, it is illogical. The relevance of evidence is tested by reference to what is in issue. The statement of claim (which here did undergo significant amendment) defines what is in issue. The trial of an action should not resemble a voyage on the *Flying Dutchman* with a crew condemned to roam the seas interminably with no set destination and no end in sight.

42 Secondly, it is contrary to authority. In *Van der Peet*, Lamer C.J. emphasized that the first task of the court, even in the context of a defence to a regulatory charge, is to characterize the claim:

... in assessing a claim to an aboriginal right a court must first identify the nature of the right being claimed; in order to determine whether a claim meets the test of being integral to the distinctive culture of the aboriginal group claiming the right, the court must first correctly determine what it is that is being claimed. The correct characterization of the appellant's claim is of importance because whether or not the evidence supports the appellant's claim will depend, in significant part, on what, exactly, that evidence is being called to support.

43 Thirdly, it defies the relevant rules of civil procedure. Pleadings not only serve to define the issues but give the opposing parties fair notice of the case to meet, provide the boundaries and context for effective pre-trial case management, define the extent of disclosure required, and set the parameters of expert opinion. Clear pleadings minimize wasted time and may enhance prospects for settlement.

[46] In this case, it is not a matter of overlooking “minor defects” in the absence of clear prejudice where pleadings in Aboriginal cases are involved: *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 at para. 20. The deficiencies in the ANOCC are not “minor” nor is there an absence of clear prejudice to the Defendants as a result.

[47] Secondly, I agree with the Defendants that the overall import of Mr. Bobb's allegations is that they are political, as opposed to juridical (as discussed in *Kelly* at para. 148). Mr. Bobb is unhappy with the administration of SFN's affairs by Chief Hobart in his capacity as Chief. This is more than evident by the relief sought, which includes the emasculation of Chief Hobart's powers while acting in that official capacity and also, his removal from that office.

[48] That these are political issues are highlighted by Mr. Bobb's emphasis on the Defendants' conduct after the 2022 election: *Kelly* at paras. 142 (which admittedly is in addition to his allegations about the 2022 election process which are now the subject of the FCC judicial review).

[49] Clearly, civil causes of action can be leveled against public figures. However, in any event, Mr. Bobb's allegations of breach of "traditional laws" in para. 38 are broad, unsubstantiated, and fail to provide sufficient material facts to the Defendants so that they may understand the allegations they face. If nothing else, even accepting Mr. Bobb's reference to "traditional laws" and the alleged breaches, they are more toward the collective of SFN and its membership, rather than him personally in the sense of a duty to him and particular harm to him. What he seeks, to use the words from *Lax Kw'alaams*, is essentially a "commission of inquiry" into how SFN is governed and whether breaches in governance have occurred.

iv) Alleged breaches of fiduciary duty

[50] Mr. Bobb's allegations of breach of fiduciary duty also raise issues. The specific allegations are found in the ANOCC at paras. 189-200.

[51] The Defendants refer to the well-know characteristics of a fiduciary relationship set out in *Frame v. Smith*, [1987] 2 S.C.R. 99 at paras. 60-63. Those characteristics include whether the Defendants could exercise discretion or power; whether they could unilaterally exercise that power or discretion to affect the legal or practical interests of another person; and whether the person is peculiarly vulnerable to or at the mercy of the person holding the discretion or power.

[52] As I will discuss below, it is unclear whether Mr. Bobb is claiming breach of fiduciary duty in his personal capacity or on behalf of SFN (it is agreed that the Defendants owe SFN a fiduciary duty). For example, as to Mr. Bobb's personal capacity, Mr. Bobb does not identify whether, or to which extent, either of the Defendants owes him any fiduciary duty. In his personal capacity, he has not established how the Defendants could exercise discretion over his affairs, nor how their unilateral exercise of discretion could affect his practical interests. Finally, he does not allege that he was vulnerable to the Defendants' decisions or actions, which is understandable since he is a lawyer.

[53] Finally, the allegations of breach of fiduciary duty lack the same details as the other allegations.

v) *Alleged misfeasance in public office, negligent misrepresentation and conspiracy*

[54] These same problems and issues continue in relation to Mr. Bobb's claims of misfeasance in public office at paras. 192-193 of the ANOCC and again amount to nothing more than bald assertions. There is a complete lack of pleading of the essential elements of the tort in respect of Mr. Bobb, as set out in *Odhavji Estate v. Woodhouse*, 2003 SCC 69 at para. 32.

[55] Further, Mr. Bobb advances serious allegations of moral turpitude and dishonesty against the Defendants. These include misfeasance in public office, negligent misrepresentation and conspiracy.

[56] For example, Mr. Bobb alleges that the Defendants misused SFN money (paras. 184). However, he does not identify any specific expenditure of revenue moneys, whether any revenue money was spent and for which purpose, or by whom, in which amount or when. Mr. Bobb also alleges the Defendants have participated in a conspiracy with others (paras. 88 and 201). However, Mr. Bobb fails to disclose any facts underlying that claim of conspiracy, including the nature of the alleged conspiracy, or to identify which conduct is complained of or the "others" who

were allegedly involved or any basis to establish that any parties acted with a common design or intention.

[57] Finally, Mr. Bobb advances unspecified allegations of negligent misrepresentation (paras. 202-203), which cause of action was discussed in *1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35 at paras. 29-35. However, Mr. Bobb does not identify: any statements allegedly made by the Defendants; to whom such statements were allegedly made; any basis to establish that such statements were untrue, inaccurate or misleading; any basis to assess whether the recipients relied on such statements.

[58] I agree with the Defendants that, despite the vagueness of the ANOCC, the allegations against them are serious. They are akin to claims of misrepresentation, fraud, breach of trust, or wilful default which, under R. 3-7(18), require a party to provide "full particulars, with dates and items if applicable". I consider that Mr. Bobb is equally required to provide these particulars to the Defendants in these circumstances which involve serious allegations: *Nail Cartel Inc. v. Duclos*, 2017 BCSC 2313 at paras. 20-21. In fact, I can only presume that this is exactly what Gibb-Carsley J. intended by his Order where the NOCC similarly included such serious allegations.

[59] I agree that the Defendants are prejudiced by the deficiencies of the ANOCC, which is wholly inadequate in providing the material facts or particulars of the allegations against them. One would be hard pressed to understand the case they are facing, other than that Mr. Bobb seeks a full ranging inquiry of SFN's affairs and their personal affairs also. Instead, the Defendants are simply left to guess the basis of Mr. Bobb's claims, and what jeopardy their might face: see *Sekhon* at para. 29. As the case authorities discuss, this pleading has the potential to cause prejudice to the Defendants if the action is allowed to proceed on that basis. Specifically, document production would be entirely open-ended, with the Defendants having no idea where their disclosure obligations begin and end. In relation to Mr. Bobb's proposed

examination of the Administrator, it is difficult to see how the Court could assess the appropriateness of that application in these circumstances.

[60] In failing to meet the minimum threshold and plead material facts to prove his claim, it is plain and obvious that this action falls far short of what must establish a “reasonable claim” and I consider that the ANOCC must be struck on this basis.

[61] I have considered whether I should exercise my discretion to allow Mr. Bobb a further opportunity to yet again attempt to rehabilitate his claim. I decline to do so. Mr. Bobb is an experienced lawyer who is fully aware of the requirements for a pleading. He was already given a chance to put forward a proper claim after the Order was granted some time ago. He has failed to do so, which I consider is indicative of the fact that this litigation is only really the means by which Mr. Bobb seeks a full scale inquiry of SFN’s affairs under the governance of the SFN’s Council by Chief Hobart and the Councillors.

[62] I also note that Mr. Bobb has remedies in relation to SFN under the s. 7 of the *FNFTA*, if he wishes to pursue financial disclosure as stated in the ANOCC (paras. 72-74 and 185-188). If Mr. Bobb fails to receive the required disclosure, he also has remedies in this Court to compel production: *FNFTA*, s. 10.

[63] In short, there is no reasonable basis to conclude that Mr. Bobb will ever provide the requisite further and better particulars as required.

[64] The flaws of the ANOCC are fundamental and, taken as a whole, are so deficient as to be beyond repair.

Is the ANOCC an Abuse of Process?

[65] Mr. Bobb’s allegations in the ANOCC concerning the 2022 and 2024 elections are already before the Board, or the FCC. I agree that the allegations in the ANOCC are essentially repetitive of what has been advanced there.

[66] I agree that these duplicative proceedings can be a basis upon which an action in this Court could be seen as an abuse of process.

[67] As such, I decline to address the ANOCC on this basis. I consider that this issue is better addressed within the more general allegations of the Defendants that no reasonable cause of action is disclosed in the ANOCC and that the pleading should be struck, as I discussed above.

What is Mr. Bobb's Standing?

[68] As the style of cause indicates, Mr. Bobb purports to bring this action on his own behalf and his "individual capacity as a member of the [SFN]". In the ANOCC, Mr. Bobb seemingly brings this action on behalf of SFN as a collective whole and various member subgroups, such as "Elders" and "Matriarchs".

[69] The Defendants did not specifically address this issue in their application regarding the NOCC. Since the NOCC was amended, the Defendants have obtained numerous affidavits from various members of the Band who assert that Mr. Bobb does not speak for them; they also state that they did not agree to Mr. Bobb representing them in this litigation. These persons also say that they disagree with the relief sought by Mr. Bobb in the ANOCC. Finally, some of them question Mr. Bobb's reference to "Elders" and "Matriarchs" in his pleading (p. 11 of the ANOCC), asking particularly what those terms mean and who exactly is said to be included in them.

[70] In addition, in spring 2024, the Defendants sent out a survey to Band members. The responses received were consistent with the affidavits in disavowing support for Mr. Bobb's lawsuit.

[71] The authorities suggest that only a Band's council has status to sue or defend on behalf of the Band, unless the party has obtained specific authority from a meeting of the Band as a whole: *Lindley v. Derrickson*, (1976) 9 C.N.L.C. 160 (B.C. S.C.) at para. 17, 1976 CarswellBC 407 (B.C.S.C.); *Joe v. Findlay* (1987), 12 B.C.L.R. (2d) 166 (B.C. S.C.) at paras. 30-33, 1987 CanLII 2728 (B.C. S.C.) see also *Wewayakai Indian Band v. Chickite*, [1998] B.C.J. No. 860 (S.C.) at para. 39, 1998 CanLII 4684 (B.C. S.C.).

[72] The above authorities were followed in *Ryan v. Leighton*, 2006 BCSC 278 where the plaintiff brought an action against the chief of her Band on behalf of “all other members of the Band”. She claimed that the chief allowed Band assets and funds to be used contrary to the Band's best interests. There was no evidence indicating the plaintiff had the authority to represent any members of the Band other than herself. Madam Justice Satanove concluded:

[19] ... the case at bar is not a case of aboriginal title or rights. It is not a case where the Band is suing or being sued by a third party. This is an internal dispute where one member of a Band is trying to sue another member of the Band for mismanagement of Band assets.

[20] In my opinion, this is not an appropriate action to be brought in a representative capacity. The plaintiff is entitled to pursue the defendants, including the newly added Band, in her individual capacity but not on behalf of all other members.

[73] In *Webb v. Genaille*, 2023 BCCA 443 (aff'g 2022 BCSC 1890), the court had occasion to discuss the standing or representation issue in the context of a band member suing the chief and councillors for breach of fiduciary duty. Like Mr. Bobb, the plaintiff had sued on her own behalf and in her “individual capacity as a member of the [Band].” The court stated that the cause of action belongs to the band, but it noted certain practical difficulties that may arise if only band councils can bring such actions (paras. 39-40).

[74] Mr. Bobb relies on the discussion in *Webb* to argue that he is entitled to bring this action. However, the court in *Webb* at para. 46 clearly declined to address the issue on its merits and the case is not binding authority for the proposition that Mr. Bobb is entitled to proceed in some capacity other than a personal one.

[75] I find that, following *Ryan*, Mr. Bobb has no standing or authority to advance the various claims on behalf of SFN or any subgroups on a collective basis. Mr. Bobb does have standing to advance claims in his personal capacity. However, in that respect, Mr. Bobb has not pleaded any material facts, particulars, or legal principles which would establish any personal wrongs or harms sustained in him in that individual capacity. The only claims advanced in the ANOCC by Mr. Bobb are

essentially derivative damages from alleged harms to the SFN Band as a collective, which are said to have caused all SFN members (which includes Mr. Bobb) injury, loss and damages.

[76] Mr. Bobb has since responded to the newly filed affidavits from various SFN members as to his action being purportedly on their behalf. He now concedes that:

I recognize that I am a party to this proceeding. I do not act in a representative capacity.

[77] Accordingly, leave aside the issues discussed below, the style of cause should be amended to refer to Mr. Bobb only and not in any other capacity.

[78] Further, there are a myriad number of references in the ANOCC that refer to such collective rights or interests and consequential damages: see for example, paras. 6, 15-17, 28, 38-39, 76, 40-71, 91-114, 142, 180 and 194-195. The extensiveness of these references makes clear that selectively striking out these improper allegations is no easy task.

CONCLUSION

[79] The ANOCC is struck for failing to disclose a reasonable claim.

[80] The ANOCC is also struck given that Mr. Bobb's claim, as presented, advances claim essentially in a representative capacity, when he has no authority to do so and where this Court has not authorized any representative claim. These "representative" claims are inextricably intertwined throughout the entirety of the ANOCC and cannot be separated from Mr. Bobb's personal claims, if the latter exists at all.

[81] The Defendants are entitled to their costs. They seek special costs of the action. In the Order, the Defendants were granted leave to apply for costs in any event of the cause if they later applied to strike the amended pleading that was anticipated to be filed then by Mr. Bobb.

[82] The Defendants argue that Mr. Bobb’s reprehensible conduct is supported by his various social media posts regarding the Defendants, which are said to be defamatory.

[83] I am not convinced that these media posts support a finding of reprehensible conduct in the course of this litigation that would support a special costs award. If those posts are defamatory (on which I make no comment), the Defendants may seek relief elsewhere. Although these social media posts appear to have been made during the currency of this litigation, I am not prepared to find, as a basis for a costs award, that these social media posts are reprehensible conduct.

[84] Accordingly, I award the Defendants their costs of the entire action on Scale B, to include the costs of the earlier application before Gibb-Carsley J.

“Fitzpatrick J.”