



No. S120480
Vancouver Registry

In the Supreme Court of British Columbia

Between

Ian Robb Forgie

Plaintiff

and

Her Majesty the Queen in Right of the Province of British Columbia

Defendant

NOTICE OF APPLICATION

Name of applicant: The Attorney General of British Columbia

To: Ian Robb Forgie

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia on Monday, April 23 at 9:45 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. The whole of the petition be struck out on the ground that it:
 - a. discloses no reasonable claim;
 - b. is unnecessary, scandalous, frivolous, or vexatious;
 - c. it is an embarrassment; and,
 - d. is otherwise an abuse of process of the Court.
2. The petition be dismissed.
3. Costs of this application be awarded to the applicant and ordered as special costs.

Part 2: FACTUAL BASIS

1. This Petition is largely indecipherable and fails to disclose any claim, is unnecessary, scandalous and vexatious, is an embarrassment and is an abuse of the process of the court.
2. This Petition does not seek judicial review in relation to a decision made in the exercise of a statutory power of decision and is incomprehensible.
3. This Petition seeks relief beyond that which this Court may grant in the scope of judicial review.

Part 3: LEGAL BASIS

1. The respondent relies on the following authorities:
 - a. Supreme Court Civil Rules, B.C. Reg. 168/2009. Rule 9-5, Rule 14-1 and Rule 20-5.
 - b. *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241, s. 1. [“*JRPA*”]
 - c. *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959. [“*Hunt*”]
 - d. *Dempsey v. Envision Credit Union*, 2006 BCSC 750 (S.C.). [“*Dempsey*”]
 - e. *Stephen v. British Columbia (Ministry of Children and Family Development)*, 2008 BCSC 1656 (S.C.). [“*Stephen*”]
 - f. *Strata Plan LMS3259 v. Sze Hang Holding Inc.*, 2009 BCSC 473 (S.C.). [“*Strata Plan*”]
2. The grounds on which this Application should be allowed are as follows:
 - a. Rule 9-5 of the Supreme Court Civil Rules provides authority to strike out and dismiss a petition if:
 - i. it discloses no reasonable claim;
 - ii. it is unnecessary, scandalous, frivolous, or vexatious;
 - iii. it is an embarrassment; or
 - iv. it is an abuse of process of the Court.
 - b. In *Stephen*, the test for whether a claim should be struck out is: “assuming that the facts as stated in the statement of claim can be proved, is it ‘plain and obvious’ that the plaintiff’s claim discloses no reasonable cause of action?”

Hunt, at page 980; *Stephen*, at para. 48.

- c. In *Stephen*, whether a claim is embarrassing is: “established when pleadings are so confusing that it is difficult to understand what is being pleaded” or “so irrelevant that it will involve the parties in useless expense”.

Stephen, at para. 50.

- d. In *Stephen*, whether a claim is unnecessary or vexatious is: “if it does not go to establishing the plaintiff’s cause of action or does not advance any claim known in law”.

Stephen, at para. 50.

- e. In *Dempsey*, abuse of process was found to be a “flexible doctrine” that may be applied to prevent a claim from proceeding if it “violates such principles as judicial economy, consistency, finality and the integrity of the administration of justice”.

Dempsey, at para. 9.

- f. *Dempsey* also identifies that a stay or dismissal of proceedings may be required if there has been an abuse of process, and “to prevent the parties being harassed and put to expense by frivolous, vexatious or groundless litigation”.

Dempsey, at para. 13.

- g. *Strata Plan* identifies that “pleadings that are so prolix and confusing that it is difficult, if not impossible, to understand the case to be met, should be struck”.

Strata Plan, at para. 36.

- h. Further, if it is plain and obvious that a redrafted pleading is bound to fail because it does not raise an arguable issue, an opportunity to redraft will not be granted.

Strata Plan, at para. 40.

- i. Rule 20-5(1) provides the authority to deny an application for an order that no fee be payable if the claim:

- i. discloses no reasonable claim;
- ii. is scandalous, frivolous, or vexatious; or
- iii. is otherwise an abuse of process.

- j. Rule 9-5(1) of the Supreme Court Civil Rules provides that costs may be ordered as special costs in the case of a successful application to strike a petition.

Part 4: MATERIAL TO BE RELIED ON

1. The Petition to the Court;
2. This Notice of Application; and
3. Such further materials as counsel may advise and this court may allow.

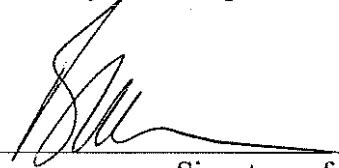
The applicant estimates that the application will take 45 MINUTES.

- This matter is within the jurisdiction of a master.
 This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on the person,
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: March 21, 2012



Signature of
 applicant lawyer for applicant
Bryant Mackey

To be completed by the court only:

Order made

<input type="checkbox"/> in the terms requested in paragraphs of Part 1 of this notice of application
<input type="checkbox"/> with the following variations and additional terms:
Date:
Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

This **NOTICE OF APPLICATION** is prepared by Bryant Mackey, Barrister & Solicitor, of the Ministry of Justice, whose place of business and address for service is P.O. Box 9280, Stn Prov Govt, 1001 Douglas Street, Victoria, British Columbia, V8W 9J7; Telephone: (250) 952-7380; Facsimile: (250) 956-9154.