IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Galang v. Canada (Attorney General),* 2026 BCSC 564

Date: 20260331
Docket: S258586
Registry: New Westminster

2026 BCSC 564 (CanLII)

Between:

Ronuel "Alex" Galang

Plaintiff

And

Attorney General of Canada and Fraser Health Authority

Defendants

Before: The Honourable Mr. Justice Veenstra

Reasons for Judgment

The Plaintiff, appearing in person:	R. Galang
Counsel for the Defendant, the Attorney General of Canada:	A. Scarth
Counsel for the Defendant, Fraser Health Authority:	D. Peck
Place and Date of Hearing:	New Westminster, B.C. December 5, 2025
Place and Date of Judgment:	New Westminster, B.C. March 31, 2026

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Introduction

[1] The defendants each apply for orders:

a) Striking out the plaintiff's claim pursuant to Rule 9-5(1) of the *Supreme Court Civil Rules* [*Rules*], without leave to amend;

b) Alternatively, dismissing the plaintiff's claim pursuant to Rule 9-6 of the *Rules*, the summary judgment rule; or

c) In the further alternative, requiring that the plaintiff post security for costs of this action, with the Attorney General of Canada ("AGC") seeking security of $15,000 and Fraser Health Authority ("FHA") seeking security of $5,000.

[2] The underlying action relates to the plaintiff's arrest by Burnaby RCMP officers on April 23, 2025, a subsequent decision to turn the arrest into an apprehension pursuant to the *Mental Health Act*, R.S.B.C. 1996, c. 288, and the plaintiff's subsequent overnight involuntary detention at Royal Columbian Hospital. The plaintiff says that the experience was traumatic and involved physical restraint, involuntary sedation, and disrespectful treatment by both police and hospital staff.

Background Facts

[3] As will be further discussed below, very little first-hand evidence was placed before the Court by the parties. That said, it appears that significant parts of the key underlying events are not in dispute.

[4] The plaintiff is a transgender woman of Filipino heritage. She resides in Burnaby, British Columbia, with her husband Mr. Parenteau. It is clear that the plaintiff believes that some of what happened to her on April 23, 2025, arises from discriminatory attitudes towards transgender persons.

[5] The plaintiff had suffered past trauma, including an assault in 2023 by a resident at a facility where she was working as a mental health worker. As of the spring of 2025, she was undertaking treatment provided through WorksafeBC to

work through PTSD symptoms, and also taking steps to have nursing training she had completed in the Philippines recognized in British Columbia. Her treatment included anti-depressant and anti-anxiety medications.

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Events of April 23–24, 2025

[6] On April 23, 2025, Mr. Parenteau called 911 to seek police assistance in respect of a domestic dispute. Two Burnaby RCMP officers attended at the home that the plaintiff shared with Mr. Parenteau. The RCMP files indicate that the first two officers arrived around 5:43 p.m. They were joined a few minutes later by a third officer.

[7] The officers spoke with each of the plaintiff and Mr. Parenteau. They then asked the plaintiff to leave the residence overnight as a cooling-down period. The plaintiff was of the understanding that, in such circumstances, police officers would invariably require the male to leave the premises, expressed this view to the officers, and questioned what gave rise to their decision to treat her differently. She also advised them that she was the tenant on the lease, she had nowhere else to stay overnight, but that Mr. Parenteau did have other options. The officers refused to change their demand, advising the plaintiff that because it was Mr. Parenteau who placed the 911 call, they viewed the plaintiff as the aggressor and the appropriate person to leave.

[8] The plaintiff refused to comply. She was then arrested and handcuffed, with the officers advising that her arrest was for “breach of the peace”.

[9] There followed further discussions. The plaintiff said that, in response to inquiries about medications, she advised the officers that she was taking anti-depressant and anti-anxiety medications. The officers’ notes suggest that the plaintiff’s behaviour gave rise to concerns about mental health. Eventually (the officer’s notes suggest that it was about 6:17 p.m.), one of the officers decided to apprehend the plaintiff under s. 28 of the *Mental Health Act*.

[10] The plaintiff was escorted to a police vehicle and transported to Royal Columbian Hospital. The police officers spoke with hospital staff and advised them of what Mr. Parenteau had told them and their own observations.

[11] The plaintiff was triaged by a nurse around 7:00 p.m. At 7:45 p.m., she was assessed by a Dr. Wood. Dr. Wood's exact status is not clear, but he may be an emergency room physician.

[12] The plaintiff's pleading alleges that she was also assessed around this time by a psychiatric resident, Dr. Roome.

[13] At 8:43 p.m., Dr. Wood completed a Form 4.1: First Medical Certificate (Involuntary Admission). At 9:12 p.m., a delegate of the "director" (the "Director") counter-signed the Form 4.1 certificate, confirming that the certificate stated grounds for the plaintiff to be admitted on an involuntary basis. The Form 4.1 is a prescribed form under the *Mental Health Act*, and the reference to "director" is (as set out in s. 1 of the *Mental Health Act*) to a "person appointed under the regulations … to be in charge of a designated facility and includes a person authorized by a director to exercise a power or carry out a duty conferred" through the *Mental Health Act*.

[14] The plaintiff says that over the course of the evening, she was restrained and subjected to involuntary intramuscular injections. She was also subjected to derogatory comments in Tagalog from nursing staff.

[15] Shortly after midnight, the plaintiff met with a Dr. Halli, the supervising psychiatrist, who prepared a consultation report. At about 1:00 a.m., Dr. Halli completed a Form 5: Consent for Treatment (Involuntary Patient), authorizing "medication management" as well as "restraints/seclusion". The form was then signed by a different delegate of the Director.

[16] The plaintiff alleges that the next day she awoke on a mattress on the floor.

[17] At 12:54 p.m., she met with a Dr. Browning, who discharged her from hospital.

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Events after Discharge

[18] On May 2, 2025, the plaintiff lodged a complaint with the RCMP's Civilian Review and Complaints Commission. A Cpl. Boyer of the Burnaby RCMP detachment was assigned to review the matter.

[19] On May 3, 2025, the RCMP officer who had decided to apprehend the plaintiff contacted the plaintiff's husband to see if he would provide a statement. He refused.

[20] Also on May 3, 2025, that officer completed a standard RCMP general occurrence report.

[21] On May 31, 2025, Cpl. Boyer emailed the plaintiff, advising that he had reviewed the police statements of the officers, and concluded based on those statements that the officers acted in accordance with RCMP policies and responded appropriately given the plaintiff's behaviour.

[22] On June 22, 2025, the plaintiff submitted an access to information request to the RCMP.

[23] On July 2, 2025, the plaintiff filed the original Notice of Civil Claim (the "NOCC") commencing the present proceeding. The defendants were named in that document as "His Majesty the King in Right of Canada (as represented by the Attorney General of Canada) and Fraser Health Authority".

[24] FHA filed a Response to Civil Claim on July 21, 2025.

[25] On August 13, 2025, the plaintiff filed an application for default judgment against AGC. That same day, AGC filed its Response to Civil Claim. The plaintiff insisted on proceeding with her default judgment application. On September 12, 2025, Justice Thomas dismissed the plaintiff's application for default judgment and awarded AGC costs of $500.00, payable forthwith by the plaintiff.

[26] The plaintiff also filed two applications against FHA – an application on August 14, 2025, seeking production of documents, and an application on

August 22, 2025, seeking various information and what were described as "particulars". The second application also sought an order that an adverse inference be drawn against FHA as a result of it having allowed CCTV footage to be overwritten.

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[27] FHA's lawyer wrote to the plaintiff on August 19, 2025, noting that it had 35 days to respond to specific document requests. However, the plaintiff insisted on proceeding with the applications without waiting any further. They were heard by Associate Judge Krentz on September 11, 2025, who dismissed the production applications and ordered that the question of adverse inference be referred to the trial judge. FHA was awarded its costs of the application in any event (but not payable forthwith).

[28] On September 18, 2025, the AGC filed a notice of application seeking to strike out Part 3 of the NOCC. The AGC filed an amended notice of application the next day, which added a request to properly name the AGC. I have reviewed these two notices of application. With respect to the application to strike out Part 3 of the NOCC, the two notices of application are focused almost entirely on the length of Part 3 (some 62 pages) and the perceived use of generative artificial intelligence in the drafting, including references to non-existent cases which appeared to be AI hallucinations.

[29] The amended notice of application was heard by Justice Dion on October 3, 2025. Justice Dion's reasons have not been transcribed. However, a formal order has been entered. It provides that:

> 1. Part 3 of the Plaintiff's Notice of Civil Claim is struck with leave to amend.
> 2. The plaintiff must deliver an amended notice of civil claim by October 15, 2025 to the defendants with the legal basis with a length no longer than 10 pages and the legal basis must be in the form of numbered paragraphs.
> 3. The requirement for the use of strikeouts and underlining pursuant to Rule 6-1(3) is waived for only Part 3 of the amended notice of civil claim.
> 4. If the plaintiff uses artificial intelligence to assist drafting her material in this action, she is required to ensure the Court cases or Court Rules she

refers to exist prior to relying on such Court cases or Rules prior to filing such material with the Court or prior to making submissions to the Court.

5. The style of cause is amended to substitute His Majesty the King in the right of Canada (as represented by the Attorney General of Canada) for Attorney General of Canada.
6. Costs payable by the Plaintiff to the Attorney General of Canada in the amount of $250 payable forthwith.

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[30] On October 15, 2025, the plaintiff filed her Amended Notice of Civil Claim ("ANOCC"). Notably, whereas the NOCC was 90 pages in length, the ANOCC was only 32 pages long. Part 3 of the ANOCC was only 6½ pages long. There was no suggestion in the hearing before me that any court cases or court rules referenced in the ANOCC do not exist.

[31] On October 22, 2025, the FHA filed a Response to the ANOCC.

[32] On October 27, 2025, the plaintiff filed a Further Amended Notice of Civil Claim ("FANOCC"). The FANOCC is quite similar to the ANOCC, and is also 32 pages, with Part 3 constituting just over six pages.

[33] The applications that are presently before the Court were filed on October 28, 2025, by the FHA, and on October 31, 2025, by the AGC. The applications were initially returnable on November 19, 2025, but not heard on that day and reset for December 5, 2025.

[34] In the interim, counsel for the AGC emailed the two entered orders (Justice Thomas and Justice Dion) to the plaintiff on November 10, 2025. Those orders included terms for payment of $500 and $250 in respect of costs. The plaintiff responded by email on November 10, 2025, asking "Can you assist me how to pay for this". Counsel for the AGC did not respond, and the plaintiff emailed again on December 2, 2025, following up on the request as to how to make payment.

[35] At the hearing before me on December 5, 2025, it was noted that the FHA's notice of application addressed the ANOCC rather than the FANOCC. Presumably that was because the FHA's notice of application was finalized prior to service on the defendants of the FANOCC. Given that there were few substantive changes

between the ANOCC and the FANOCC, I proceeded to hear the application. It was clear that the issues that were raised were virtually the same regardless of which of the two documents was referred to, and there was no prejudice to any of the parties in proceeding on that basis.

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<u>The Evidence</u>

[36] The FHA supported its application with:

a) Two affidavits of a legal assistant at the law firm of FHA's counsel, attaching various documents from the court file in this proceeding, plus a draft bill of costs; and

b) The affidavit of a risk manager from FHA's Surrey office, attaching what is said to be a certified copy of the Royal Columbian Hospital patient chart with respect to the plaintiff.

[37] The AGC supported its application with:

a) An affidavit of the civil disclosure coordinator for the Burnaby RCMP, attaching a transcript of the 911 call from April 23, 2025; and

b) An affidavit of a legal assistant at the office of counsel for AGC, attaching what is said to be "a redacted copy of the PRIME record in respect to April 23, 2025, apprehension of plaintiff", as well as a draft bill of costs. That PRIME record includes printouts of the RCMP's electronic records of the events of April 23–24, 2025, including General Occurrence Reports completed at various times by the officers involved. Nothing in the affidavit suggests either personal knowledge by the deponent of the first attachment or any basis on which to assess its authenticity or completeness.

[38] Each of the defendant sought to rely on documents produced in this manner as evidence of the truth of the contents of the attachments. The AGC asserted that the general occurrence reports completed by the various police officers should be

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accepted as their evidence with respect to the events of April 23, 2025 – notwithstanding that two of the three reports were completed after the plaintiff had initiated the RCMP complaints process. Similarly, the FHA asserted that the various doctor's reports in the patient chart should be accepted as evidence with respect to their respective interactions with the plaintiff.

[39] This evidence is tendered primarily in respect of the summary judgment applications made pursuant to Rule 9-6. That application seeks a final order to dismiss the plaintiff's claim on the merits. Where final orders are sought, affidavit evidence should mirror evidence the witness could give at trial, and therefore must (subject to limited exceptions) be based on personal knowledge. Hearsay and evidence based on information and belief are generally inadmissible: *Latifi v. The TDL Group Corp.*, 2024 BCSC 832 at para. 67.

[40] I accept that some of the medical charts, and in particular those containing the recording of vital signs and laboratory tests, may well be admissible as medical records or business records. Similarly, the transcript of the 911 call (which could presumably be supported by the actual recording) is in effect real evidence that is retained in the ordinary course, and is likely admissible as a business record.

[41] I have great difficulty, however, with the idea that the evidence of the individuals whose conduct is directly in issue in this case can be introduced through affidavits of legal assistants and risk management officers with no direct knowledge of any material facts in the case. There is no opportunity to challenge or cross-examine those witnesses on the key material facts.

[42] As noted at s. 42(4) of the *Evidence Act*, R.S.B.C 1996, c. 124:

> Nothing in this section makes admissible as evidence a statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to a fact that the statement might tend to establish.

[43] It is not clear to me exactly when those the plaintiff interacted with became aware that proceedings were "pending or anticipated". Given the early stage of this proceeding, the plaintiff has had no opportunity to pursue this question. In all the

circumstances, I am reluctant to accept that the narrative evidence of either the doctors or the police officers on the matters of controversy in this action has been properly placed before the Court for purposes of seeking a final order by way of summary judgment.

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Positions of the Parties

FHA

[44] In their notice of application, FHA isolated the specific complaints that pertain to FHA as follows:

> a) Allegations that that Fraser Health unlawfully detained the Plaintiff at Royal Columbian Hospital without lawful authority or compliance with the Mental Health Act;
>
> b) Staff and security are accused of using mechanical restraints, including pelvic restraints, and administering intramuscular sedation without medical necessity, explanation, or consent, and without considering less restrictive alternatives. During the application of pelvic restraints, a male security officer allegedly made non consensual contact with the Plaintiff's genital area, which was vocally objected to but ignored, with no subsequent investigation or report;
>
> c) The Plaintiff further alleges degrading and discriminatory treatment, including repeated misgendering and deadnaming despite clear documentation of her preferred name and gender identity, and a derogatory comment made in Tagalog by a nurse;
>
> d) Fraser Health is accused of negligence in psychiatric assessment by relying on unverified allegations from the RCMP without independent corroboration, which influenced clinical decisions and were entered into medical records;
>
> e) The claim also asserts an invasion of privacy due to the unauthorized disclosure of sensitive information about the Plaintiff and her spouse to third parties …

[45] The FHA argues that the allegations of negligence in the FANOCC, as they relate to FHA, are almost entirely based on the diagnosis and treatment decisions of physicians who are not employees of FHA. However, counsel for FHA acknowledged at the hearing that there is no actual evidence with respect to the employment status of the various doctors who dealt with the plaintiff.

[46] The FHA says that the FANOCC alleges that FHA staff disclosed sensitive personal health information, causing her emotional distress and reputational harm. The FHA says that the law is clear that there is no common law tort of invasion or breach of privacy in British Columbia. The FHA says that the plaintiff has not made any reference to the *Privacy Act*, which might sustain such a claim, and in any event, the pleadings fail to address the essential elements of the tort created by the *Privacy Act* – being that (i) a person (ii) wilfully (iii) without a claim of right and (iv) violated the privacy of another.

[47] The FHA says that the claims of battery appear to relate at least in part to non-consensual physical contact by hospital security officers with the plaintiff's genital areas during the application of pelvic restraints. The FHA says with respect to this claim that:

a) Pursuant to ss. 8 and 31 of the *Mental Health Act*, the plaintiff is deemed to have consented to treatment, with that treatment including the use of restraints; and

b) In any event, the plaintiff has not specifically pleaded that the application of force was intentional.

[48] With respect to the claim of intentional infliction of mental distress, the FHA says that the material facts that must be proved are:

a) Conduct that is flagrant and extreme,

b) Is plainly calculated to produce harm; and

c) Results in visible or provable illness.

[49] The FHA says that these elements are not specifically addressed in the FANOCC, and in any event, the FHA says that the conduct said to be at the base of this claim, being:

a) The use of restraints and isolation in a dimly lit room;

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b) Repeated misgendering of the plaintiff;

c) Degrading or dismissive treatment;

d) The failure to provide trauma-informed care, but rather the use of coercion and dehumanization

would not meet the requirements of this tort.

[50] With respect to Rule 9-5(1)(b), the FHA says that:

a) Part 1 of the FANOCC contains a number of evidentiary statements rather than concise material facts.

b) The FANOCC is replete with irrelevant allegations, glib commentary, tangential asides, and inflammatory comments.

c) To the extent the FANOCC pleads causes of action that are known to law, such as negligence, intentional infliction of mental distress, or invasion of privacy, the claim fails to set out material facts that, if true, support these claims.

d) In any event, many of the allegations made are the sorts of assumptions and speculation that the Court should not accept as true.

[51] With respect to the Rule 9-6 summary judgment application, the FHA submits that the allegations against it should be dismissed on the merits because they are fundamentally based on care and treatment received pursuant to:

a) Certification under the *Mental Health Act*, with respect to which there is deemed consent as well as statutory protection for actions taken in good faith; and

b) Treatment and diagnosis decisions of physicians who are not employees of FHA and for whom FHA is not vicariously liable.

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[52] With respect to the security for costs application, the FHA relies on the inherent jurisdiction of the court to order security for costs to protect a defendant from the likelihood that in the event of success it will be unable to recover its costs from the plaintiff. The FHA says that there is evidence that the plaintiff is on limited income, but not sufficient evidence to demonstrate that an order for security would prevent the plaintiff from advancing a *bona fide* claim.

AGC

[53] The AGC submits that the effect of s. 11 of the *Police Act*, R.S.B.C. 1996, c. 367, is that claims against "provincial constables" – which includes RCMP officers acting as municipal police forces in British Columbia – are properly brought against the Province. The AGC further says that pursuant to s. 21 of the *Police Act*, individual officers bear no personal liability unless guilty of "dishonesty, gross negligence or malicious or wilful misconduct", or for claims of defamation. The AGC notes that there is no pleading of dishonesty, gross negligence or malicious or wilful misconduct. As a result, the only viable claim in the circumstances would be against the Province. The claims made against the AGC should therefore be struck as being brought against the wrong party.

[54] In any event, the AGC says that the officers are protected by statutory immunity granted by s. 16 of the *Mental Health Act* in respect of steps taken in reliance on s. 28 of that *Act*.

[55] The AGC notes that para. 6 of Part 3 of the FANOCC alleges that the "RCMP's number, positioning and repeated ordered caused her to fear the use of force", and says that this constitutes assault. The AGC submits that this simply does not meet the definition of assault: *Edgars v. British Columbia (Children and Family Development)*, 2025 BCSC 2202 at paras. 37–39.

[56] With respect to the claim in defamation, the AGC says that the pleadings indicate that this claim relates to what the RCMP told hospital staff about what had been reported to them by the plaintiff's husband, as well as their own observations of the plaintiff's behaviour. The AGC says that the transcript of the 911 recording

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confirms the initial report of the plaintiff's husband. The AGC also relies on s. 28(1) of the *Mental Health Act*, which (a) implicitly permits a police officer to act on "information received", and (b) imposes an implicit legal obligation to report to health authorities the information that gave rise to the apprehension. The AGC says that there is at the very least a practical necessity to explain to the hospital staff the reasons for having apprehended a person – it is simply not reasonable to suggest that officers must simply drop off individuals apprehended pursuant to the *Act* without explaining the reasons why.

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[57] With respect to security for costs, the AGC says that the court has jurisdiction to order costs where an impecunious plaintiff has a weak claim or has failed to pay costs before. The AGC notes that the costs awards of Justices Thomas and Dion had not yet been paid, although counsel acknowledged that the plaintiff had made contact seeking information on how to pay those awards. However, the AGC says that the plaintiff has not actually paid the costs, the claims advanced against it by the plaintiff are bound to fail at trial, and the plaintiff is impecunious. The AGC says that its bill of costs projects likely tariff costs of $43,366 in respect of a 16-day liability only trial, and submits that the action should be stayed until security for costs of $15,000 is paid into court.

Plaintiff

[58] With respect to Rule 9-5, the plaintiff says that if required to, she will shorten her statement of facts and she will accept any direction from the Court in that regard. She explained that when she first prepared the NOCC, she wanted to document everything that happened, which is why she prepared a careful, chronological summary of events. She now understands the need to focus on addressing material facts that relate to each claim that is pleaded. To the extent that any material facts are not apparent in her pleading as currently drafted, she submits that they are available in the evidence as a whole and can be pleaded if she is given an opportunity.

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[59] With respect to the claims against FHA, while unsure about the status of the doctors, the plaintiff says that the Director's delegates who signed the Form 4.1 certificate and Form 5 consent forms are FHA employees, as are the nursing and security staff who she expressed concern about. She notes as well that one of her claims is for a failure to provide her with a Form 13 or otherwise inform her of her rights as someone detained pursuant to the *Mental Health Act*, which is a duty imposed on the Director (and therefore on the institution). Finally, she submits that some of the claims advanced are of conduct that is unreasonable and cannot justified by any deemed consent.

[60] With respect to the claims against the AGC, the plaintiff says that the pleaded facts give rise to claims of gross negligence, dishonesty and wilful misconduct, and that with respect to those aspects of the claims, the AGC gains no benefit from s. 11 of the *Police Act*. For claims that s. 21 says may proceed against an individual police officer, RCMP officers can be personally liable and the AGC can be vicariously liable in respect of that personal liability: ss. 3(b) and 36 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.

[61] The plaintiff further submits that s. 11 does not prevent the AGC from being jointly and severally liable along with the Province for claims against individual RCMP officers, whether or not there is gross negligence, dishonesty or wilful misconduct.

[62] With respect to the summary judgment applications, the plaintiff says that the affidavit evidence tendered by the defendants is not admissible for purposes of a final order, but in any event, points to various inconsistencies as between the various records that have been placed in evidence. She also submits that some of the comments of the RCMP officers could be read as indicating decision-making with respect to her based on stereotypes or bias in respect of transgender women rather than on the objective facts of the situation.

[63] With respect to the claim in defamation (for which the AGC would be liable pursuant to s. 21 of the *Police Act*), the plaintiff says that there is no admissible

evidence of what the police officers said to hospital staff. The 911 recording only relates to what was said to the 911 operator, and not to the discussions the RCMP officers had with Mr. Parenteau at the house. In any event, the plaintiff says that at best ss. 16 and 28 of the *Mental Health Act* create a qualified privilege that may or may not be available to the officers. The plaintiff notes that Dr. Wood's own notes suggest that based on his own observations of the plaintiff, he questioned whether there was an acute psychiatric episode, but that he relied on the statements of the RCMP officers to sign the Form 4.1.

[64] The plaintiff also notes that some of the claims she advances relate to failure to provide proper training of the RCMP officers involved, which is a claim against the RCMP directly.

[65] With respect to security for costs, the plaintiff notes that she is currently under a consumer proposal that predates the incidents in issue. She says that her financial position does not diminish the *bona fides* or legal merit of her claims, and that the clear purpose of the request for security for costs is to prevent her from pursuing meritorious claims.

Legal Context – Statutory Provisions

[66] I will deal first with some of the statutory provisions that were raised in the course of the submissions of FHA and AGC, then turn to the procedural rules that govern each specific application.

Relevant *Mental Health Act* provisions

[67] The *Mental Health Act* grants certain powers and provides certain protections to both police officers and staff in a mental health facility. With respect to police officers, s. 28 provides:

> (1) A police officer or constable may apprehend and immediately take a person to a physician or nurse practitioner for examination if satisfied from personal observations, or information received, that the person
>
> (a) is acting in a manner likely to endanger that person's own safety or the safety of others, and

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> (b) is apparently a person with a mental disorder.
>
> (2) A person apprehended under subsection (1) must be released if a physician or nurse practitioner does not complete a medical certificate in accordance with section 22 (3) and (4).

[68] Section 22 deals with the process for a mental health facility to determine whether detention of a person is appropriate:

> (1) The director of a designated facility may admit a person to the designated facility and detain the person for up to 48 hours for examination and treatment on receiving one medical certificate respecting the person completed by a physician or nurse practitioner in accordance with subsections (3) and (4).
>
> …
>
> (6) A medical certificate completed under subsection (1) in accordance with subsections (3) and (4) is authority for anyone to apprehend the person to be admitted, and for the transportation, admission and detention for treatment of that person in or through a designated facility.

[69] The *Mental Health Regulation*, B.C. Reg. 233/99, prescribes certain forms, one of which is Form 4.1, to be used for admission of a person to a facility pursuant to s. 22(1) of the *Act*. That is the form completed in this case by Dr. Wood.

[70] Where a person has been admitted to a facility, ss. 8(a) and 32 of the *Act* provide, in effect, that the person is deemed to consent to treatment:

> 8. A director must ensure
>
> (a) that each patient admitted to the designated facility is provided with professional service, care and treatment appropriate to the patient's condition and appropriate to the function of the designated facility and, for those purposes, a director may sign consent to treatment forms for a patient detained under section 22 … ,
>
> …
>
> 31. (1) If a patient is detained in a designated facility under section 22 …, treatment authorized by the director id deemed to be given with the consent of the patient.

[71] I note that what I have cited is the version of s. 31(1) that was in effect in April 2025. That subsection was deleted in December 2025 by the *Mental Health Amendment Act (No. 2), 2025*, S.B.C. 2025, c. 28, which came into force by Royal Assent on December 3, 2025. The amendment only came to light during the course

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of the hearing before me, and submissions on the present application were based on the wording as it previously existed. I note that nothing in the amending statute expressly purports to give it retroactive effect.

[72] The *Mental Health Regulation* prescribes the use of Form 5 to provide "Consent to Treatment" on behalf of an involuntary patient. That is the form completed in this case by Dr. Halli and signed by a delegate of the Director.

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[73] Section 34 of the *Mental Health Act* requires that certain information be provided to each patient detained in a designated facility pursuant to s. 22(1):

> (1) The director must give a notice to a patient on
>
> (a) the patient's detention in or through a designated facility under section 22 (1), 28 (5), 29 or 42 (1);
>
> …
>
> (2) A notice under this section must be given in writing in the prescribed form and orally and must inform the patient of the following:
>
> (a) the name and location of the designated facility in or through which the patient is detained;
>
> (b) the right set out in section 10 of the *Canadian Charter of Rights and Freedoms*;
>
> (c) the provisions of sections 23 to 25, 31 and 33;
>
> (d) any other prescribed information.
>
> (3) If the director is satisfied that a patient was unable to understand the information in the notice at the time the notice was given to the patient, the director must give the notice again to the patient as soon as the director considers that the patient is capable of understanding the information in the notice.

[74] Section 11 of the *Mental Health Regulation* prescribed (prior to December 2025) the use of Form 13 for the giving of notice pursuant to s. 34.

[75] The plaintiff says that this form was not given to her, nor was the information specified in s. 34 provided to her, by the FHA. The FHA does not deal with this issue in its application materials.

[76] Finally, s. 16 of the *Mental Health Act* provides certain immunity from claims to persons acting under the *Act*:

A person is not liable in damages as the result of doing any of the following in good faith and with reasonable care:

(a) making an application or laying an information;

(b) requesting that a person be admitted to, or admitted to and detained in, a designated facility;

…

(b.2) if the person is the director, admitting a patient to the designated facility and detaining the patient on the authority of

(i) a medical certificate completed under section 22 by a physician or a nurse practitioner,

(ii) a report made under section 24,

(iii) a determination made under section 25, or

(iv) a warrant;

(b.3) if the person is the director, authorizing treatment or signing a consent to treatment form;

(c) signing a medical certificate or making a report if the person is a physician or nurse practitioner;

…

(f) apprehending, transporting or taking charge of a person on the authority of

(i) a medical certificate, or

(ii) if a peace officer, a warrant;

(f.1) if a police officer or constable, apprehending a person under section 28 (1); …

[77] I note that the December 2025 amendments to the *Mental Health Act* added a further subsection to s. 16:

(b.4) providing to a patient a professional service, or care or treatment, authorized by the director under this Act to be given to the patient, including treatment described in a consent to treatment form signed under section 8 (a);

Relevant provisions of the provincial *Police Act* and the federal *Crown Liability and Proceedings Act*

[78] As noted above, the AGC relied on s. 11 of the *Police Act*, which states:

(1) The government is liable for torts committed by the following persons:

(a) provincial constables, auxiliary constables, special provincial constables and IIO investigators, if the tort is committed in the performance of their duties;

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> …
>
> (2.1) If section 21 (3) (a) or (b) *[personal liability]* applies to a person who commits a tort for which the government is liable under subsection (1) of this section, the person and the government are jointly and severally liable for the tort committed by the person.
>
> (3) The Minister of Finance must pay out of the consolidated revenue fund, on the requisition of the minister, money required for the purposes of subsection (2).

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[79] The word "government" in a provincial statute refers to "Her Majesty in right of British Columbia" (i.e. the provincial government): *Interpretation Act*, R.S.B.C. 1996, c. 238, s. 29.

[80] Section 21 grants certain immunity to police officers from personal liability, but also sets out certain circumstances in which a police officer may be held personally liable for their actions:

> (1) In this section, "police officer" means either of the following:
>
> (a) a person holding an appointment as a constable under this Act;
>
> (b) an IIO investigator.
>
> (2) No action for damages lies against a police officer or any other person appointed under this Act for anything said or done or omitted to be said or done by the person in the performance or intended performance of the person's duty or in the exercise of the person's power or for any alleged neglect or default in the performance or intended performance of the person's duty or exercise of the person's power.
>
> (3) Subsection (2) does not provide a defence if
>
> (a) the police officer or other person appointed under this Act has, in relation to the conduct that is the subject matter of action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct, or
>
> (b) the cause of action is defamation.
>
> (4) Subsection (2) does not absolve any of the following, if they would have been liable had this section not been in force, from vicarious liability arising out of a tort committed by the police officer or other person referred to in that subsection:
>
> …
>
> (c) the government, in a case to which section 11 applies.

[81] More generally, the *Crown Liability and Proceedings Act*, R.S.C. s. C-50 [*CLPA*], s. 3(b)(i) makes the federal Crown liable for damages in respect of a tort committed by a "servant of the Crown", while s. 36 confirms that:

> For the purposes of determining liability in any proceedings by or against the Crown, a person who was at any time a member of the Canadian Forces or of the Royal Canadian Mounted Police shall be deemed to have been at that time a servant of the Crown.

[82] However, s. 10 of the *CLPA* provides that:

> No proceedings lie against the Crown by virtue of subparagraph 3(a)(i) or (b)(i) in respect of any act or omission of a servant of the Crown unless the act or omission would, apart from the provisions of this Act, have given rise to a cause of action for liability against that servant or the servant's personal representative or succession.

[83] Counsel for the AGC referenced several authorities that explain the interaction of these various statutory provisions. Unfortunately, the authorities were not referenced in the application materials and so were new to all parties when raised at the hearing.

[84] In particular, in *Ilic v. British Columbia (Justice)*, 2023 BCSC 167, Justice Forth explained that:

> [174] The RCMP is a federal government department and is not a legal entity that can be sued: *Cooper v. Canada (R.C.M.P.)*, 2001 BCSC 1788 at para. 48; *Acumar Consulting Engineers Ltd. v. The Association of Professional Engineers and Geoscientists of British Columbia (APEGBC)*, 2014 BCSC 814 at para. 49. Any allegations must be made against individual members of the RCMP and not against the RCMP at large: *Aune v. Canada (Attorney General)*, 2013 BCSC 1783 at para. 121. Tort liability of the actions of individual members of the RCMP rests against the Minister of Justice or the Attorney General of Canada (the "Attorney General").
>
> [175] Liability of the federal Crown is governed by the *CLPA* and, in accordance with the *CLPA*, the Attorney General of Canada is the legal representative of the federal Crown: see s. 23(1). The Attorney General is vicariously liable for torts committed by federal Crown servants. RCMP members are federal Crown servants pursuant to s. 36 of the *CLPA*, and the Attorney General is liable to the extent that the RCMP members would be liable as individuals: see ss. 3 and 24. Section 9 of the *CLPA* provides the federal Crown with immunity from tort liability where the plaintiff has already received, or is eligible to receive, certain federal benefits associated with the same loss claimed in tort.

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> [176] The RCMP may also be contracted to act as a provincial police force. Pursuant to the authority of s. 20 of the *RCMP Act*, and s. 14(1) of British Columbia's *Police Act*, R.S.B.C. 1996, c. 367 [*Police Act*], the Government of Canada and the Province of British Columbia have entered into a 20-year agreement, effective April 1, 2012, titled the Provincial Police Service Agreement, which authorizes the RCMP to carry out the powers and duties of a provincial police force in British Columbia.
>
> [177] During the relevant period relating to the plaintiff's claim, the Minister of Justice of British Columbia ("Minister") was the provincial minister responsible for the administration of the *Police Act*. This responsibility includes the Minister bearing joint and several liability under s. 11 of the *Police Act* for torts of certain police officers, including police constables. In acting as the provincial police force, RCMP members are deemed to be provincial constables under s. 14(2)(b) of the *Police Act*. The Minister's statutory liability is subject to the Provincial Police Service Agreement (the "Agreement").
>
> [178] The Minister's liability arises when an RCMP member is acting as a provincial constable in accordance the Agreement and the member commits a tort in the performance of their duties under s. 11(1)(a) of the *Police Act*.

<u>Applications to Strike Pleadings</u>

Rule 9-5 – Legal Principles

[85] Rule 9-5(1) provides that:

> At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
>
> (a) it discloses no reasonable claim or defence, as the case may be,
>
> (b) it is unnecessary, scandalous, frivolous or vexatious,
>
> (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
>
> (d) it is otherwise an abuse of the process of the court,
>
> and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[86] As stated in *Sahyoun v. Ho*, 2015 BCSC 392 at para. 57:

> [57] The test on an application to strike an action under R. 9-5(1)(a), on the basis the pleadings do not disclose a cause of action, is whether it is plain and obvious the claim cannot succeed. It requires a conclusion that, assuming that the facts as stated are true, those facts disclose no cause of action and the pleadings disclose no arguable issue. If there is a chance that the action may succeed, then the action should be allowed to proceed …

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[87] As set out in *Willow v. Chong*, 2013 BCSC 1083 at para. 20:

> [20] Under Rule 9-5(1)(b), a pleading is unnecessary or vexatious if it does not go to establishing the plaintiff's cause of action, if it does not advance any claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the court's time and public resources … If a pleading is so confusing that it is difficult to understand what is pleaded, it may also be unnecessary, frivolous or vexatious. …

[88] A helpful summary of factors considered with respect to an application to strike pursuant to Rule 9-5(1)(b), (c) and (d) is found in *Dempsey v. Envision Credit Union*, 2006 BCSC 750 at para. 17:

> [17] In summary, a pleading will be struck out if:
>
> (a) the pleadings are unintelligible, confusing and difficult to understand;
>
> (b) the pleadings do not establish a cause of action and do not advance a claim known in law;
>
> (c) the pleadings are without substance in that they are groundless, fanciful and trifle with the Court's time;
>
> (d) the pleadings are not bona fides, are oppressive and are designed to cause the Defendants anxiety, trouble and expense;
>
> (e) the action is brought for an improper purpose, particularly the harassment and oppression of the Defendants.
>
> [Citations omitted.]

[89] Rule 9-5(1) requires consideration of the impugned pleading in light of the rules governing pleadings. There is a helpful discussion of this in *Lu v. Shen*, 2020 BCSC 490. In *Lu*, Justice Adair began by quoting from *Weaver v. Corcoran*, 2017 BCCA 160 at para. 63:

> [63] The function of pleadings is to define and clarify the issues of fact and law for determination. Pleadings give opposing parties fair notice of the case to be met and set the boundaries and context for matters such as pre-trial discovery, presentation of evidence and argument at trial. The plaintiff defines the issues by stating, succinctly, the material facts for each cause of action, namely, those necessary to support the complete cause. Upon seeing the case to be met, the defendant responds in a manner which allows the court to understand the issues of fact and law that must be decided …

[90] In *Lu*, Justice Adair went on to explain that:

> [42] It is the role of pleadings to serve as the frame for an action. Properly drawn, they precisely define the issues the court will be asked to decide, they advise the other party of the case to be met, they determine the extent of pre-trial procedures, and they guide the trial process. The provisions of the *Rules* governing pleadings exist to support and facilitate those ends. When pleadings are disorganized, prolix, or confusing, or when they raise irrelevancies, pleadings impede litigation in contradiction to their mandate. …
>
> [43] Rule 3-1(2) requires that a notice of civil claim must set out "a concise statement of the material facts giving rise to the claim" and "a concise summary of the legal basis for the relief sought" [underlining added], and must otherwise comply with Rule 3-7. These Rules also apply to a counterclaim: see Rule 3-4(6).
>
> [44] With respect to a response to civil claim, for any fact set out in Part 1 of the notice of civil claim that is denied, a defendant must "concisely set out the defendant's version of that fact" [underlining added]: Rule 3-3(2)(a)(ii). Further, a response to civil claim must "set out, in a concise statement, any additional material facts that the defendant believes relate to the matters raised by the notice of civil claim" [underlining added]: Rule 3-3(2)(a)(iii). Rule 3-3(2)(c) requires that, if the defendant opposes any of the relief sought against the defendant, the defendant must set out a concise summary of the legal basis for that opposition. The response to civil claim "must otherwise comply with Rule 3-7": Rule 3-3(2)(d).
>
> [45] The requirements in Rule 3-1(2) and Rule 3-3(2), that the pleading set out a "concise statement" and "concise summary" are mandatory and directed to promoting clarity. The word "concise" is defined in *The Oxford English Dictionary* (11th ed. Revised) as "giving information clearly and in a few words." Thus, both brevity and clarity are important in a pleading. …
>
> [46] The requirement that the statement of the material facts and the summary of the legal basis be "concise" emphasizes the importance of stating clearly everything that is necessary, but not more. Going beyond a concise statement or summary is not conducive to defining and limiting the issues in the case. It is incompatible with the goal of the efficient resolution of issues on their merits: see Rule 1-3. The court or the adverse party should not have to hunt through many paragraphs to find the concise statement of the essential elements of a claim or defence. …
>
> [47] Rule 3-7(1) brings home the point that a material fact is different than evidence and that evidence must not be pleaded. 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 sufficiently pleaded, and liable to be struck out. …

[91] A more detailed discussion of these issues is found in the judgment of Justice Voith in an earlier judgment in *Sahyoun* [2013 BCSC 1133 at paras. 15–33].

[92] The challenges in discerning between material facts and evidence were noted in *Lover-Peace v. Erickson*, 2026 BCCA 53:

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> [50] A material fact is a "necessary" fact that is required to establish the essential elements of a plaintiff's claim: *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 at para. 54. Evidentiary facts are facts that "tend to prove" the material facts, either directly or indirectly: *Jones v. Donaghey*, 2011 BCCA 6 at para. 18. For example, when pleading negligence, a plaintiff must plead material facts that if accepted as true, would establish a breach of the applicable duties and standards of care. However, the pleading should not set out details of testimony, documents, or other forms of evidence the plaintiff intends to adduce at trial to prove those breaches on a balance of probabilities. In *Mercantile*, this Court acknowledged that "there are times where the distinction between what constitutes a material fact and what constitutes evidence may be blurred and difficult to apply": at para. 49. Nonetheless, the distinction is "important" and a notice of civil claim should confine itself to facts that "would be <u>necessary</u> for the plaintiff to prove, if disputed, in order to support [their] right to the judgment of the court" …
>
> [Emphasis in original.]

[93] While these cases set out expectations, a court must be cautious in striking out what may be a valid claim. As set out in *Aubichon v. Grafton*, 2022 BCCA 77:

> [26] Courts are required to be cautious when striking a claim and to "err on the side of permitting a novel but arguable claim to proceed to trial": *Imperial Tobacco* at para. 21. Generally, where there is a fit question to be tried, where the claim is not "certain to fail" or where there are serious questions of law, the matter should proceed to trial. …

[94] To similar effect are the following comments in *FORCOMP Forestry Consulting Ltd. v. British Columbia*, 2021 BCCA 465:

> [22] The authorities are also consistent in directing that a court, on an application to strike a statement of claim as disclosing no reasonable cause of action, is required to read the statement of claim generously and to accommodate inadequacies in form that are merely the result of drafting deficiencies …

[95] With respect to Rule 9-5(1)(b), the Court of Appeal has endorsed the following comments in *The Public Guardian and Trustee of British Columbia v. Johnston*, 2016 BCSC 1388, aff'd 2017 BCCA 59 [see *Lover-Peace* at para. 46]:

> [52] A pleading may be embarrassing or scandalous within the contemplation of the Rule where it: does not state the real issues in an intelligible form; is overly prolix; includes irrelevant facts; is calculated to confuse the opposing party and make it difficult, and perhaps impossible, to answer; or contains arguments or evidence ….
>
> [53] That being said, so long as the pleadings do not confuse the opposing party or make it difficult for that party to understand the case that must be

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> met, sheer verbosity does not ordinarily provide sufficient justification for striking a claim ….

Analysis

[96] I begin by noting two things.

[97] First, the plaintiff responded to the order of Justice Dion by substantially rewriting Part 3 of the NOCC, reducing its length, focusing on the claims made, and eliminating references to non-existent AI-hallucinated cases.

[98] Second, the application made to Justice Dion is substantially different from that made before me. The issues raised at the hearing before me are substantively different from those raised before Justice Dion. This is not a case where the plaintiff has been ordered to amend a pleading to address issues identified at a hearing, files an amended pleading that only partially addresses those issues, and then the other parties are required to return to court again to re-argue the same points.

[99] One might argue that the AGC in particular, if it wished to raise the issues it now raises (such as the provisions of s. 11 of the *Police Act*), should have raised those issues before Justice Dion. That said, it may well have been difficult to identify the specific issues on which the AGC now relies given the substantial differences between the NOCC that was before Justice Dion and the FANOCC that was before me.

[100] The issues that were raised before me are significant. However, they are specific and discrete, and it is my view that the plaintiff deserves at least one opportunity to address those issues.

[101] I will make one further general comment. The plaintiff acknowledged during the hearing that Part 1 of the FANOCC was prepared as a chronological summary of everything that happened on April 23 and 24, 2025. There is some scope in Part 1 of a notice of civil claim to set out fundamental background facts that give colour to a claim, and chronological ordering may in many cases be a helpful way to present

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those background facts. However, it is my view that there are portions of the factual summary in Part 1 that are unnecessary to any of the claims and are unhelpful.

[102] In the following sections, I will discuss some of the elements of the common law claims that the plaintiff has referenced in Part 3 and the statutory provisions that impact those claims. These are not straightforward claims. The circumstances call for a notice of civil claim based on a careful determination of which of those claims to move forward with, the preparation of a summary of the elements of each claim, and then a consideration of which parts of the chronology in Part 1 are material facts that help establish the various elements of the claims that the plaintiff intends to proceed with.

Claims Against the AGC

[103] The plaintiff has pleaded several claims that arise from the conduct of the three RCMP officers. She has asserted those claims against the AGC on the understanding that the AGC is vicariously liable for their actions. However, it is clear that the combined effect of the provisions cited above from the _Police Act_ and the _CLPA_, as explained in _Ilic_, is that the AGC is not vicariously liable unless the conduct falls within the scope of s. 21(3) of the _Police Act_.

[104] It is unfortunate that the _Ilic_ case was not referenced in the Notice of Application, as the plaintiff had no opportunity in advance of the hearing to consider its implications.

[105] The FANOCC does not, as currently stated, allege dishonesty, gross negligence, or malicious or wilful misconduct. As such, the basic underlying tort claims in respect of the RCMP officers (other than defamation) cannot stand as against the AGC. However, it may well be that the claims as stated can be amended to assert a basis to bring the claim within s. 21(3)(a).

[106] It may also be, with this issue now having been identified, that the plaintiff wishes to consider taking steps to advance the claim against the provincial government. There is, at this point, no issue of limitation periods barring claims. To

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the extent that there are otherwise validly stated tort claims in respect of the RCMP officers, it would seem that those claims could be advanced against a different defendant.

[107] With respect to the claim in defamation, I am not persuaded by the submission that either s. 28(1) or s. 16(f.1) of the *Mental Health Act* provides a blanket immunity from claims in defamation. No specific authority was cited to me for that submission. More generally, to the extent there is an implicit duty to report to a mental health facility the reasons for a person's apprehension, duties of that sort are more likely to give rise to a qualified privilege in defamation law. Qualified privilege is not an absolute immunity. Whether the plaintiff's belief that some of the police conduct was motivated by discriminatory attitudes toward transgender persons can be established as a matter of fact, and whether such motivation might overcome a qualified privilege, are matters that I do not consider appropriate to decide at this point. The submissions made on the defamation issues were general in nature. In my view, this is a complex issue and not appropriate for resolution on a Rule 9-5(1) application.

[108] The other specific issue raised by the AGC is the manner in which the common law tort of assault was pleaded. As set out in *Edgars*:

> [37] The key principles of the common law tort of assault were described in *Khan v. School District No. 39*, 2021 BCSC 49:
>
> > [17] Assault is the intentional creation of the apprehension of imminent harmful or offensive contact, even if contact never actually occurs. Imminent apprehension of harm is a required. Frightening or threatening someone does not constitute an assault unless the event feared is imminent. To threaten to do harm at some future time does not amount to an assault. (Linden & Feldthusen, *Canadian Tort Law*, 11th ed. (Toronto: LexisNexis, 2018) [*Canadian Tort Law*] at 50–51).
>
> [38] In the context of police action, Justice Pearlman noted in *Laktin v. Vancouver (City)*, 2013 BCSC 2270:
>
> > [15] On the hearing of this application, the plaintiff did not argue that either Sergeant Clee or Constable Dujmovic committed the tort of assault. In order to establish that one or both of the applicant defendants committed the tort of assault, the plaintiff must prove that one or both of them engaged in conduct intended to arouse apprehension in the plaintiff of imminent harmful contact, that the threat of such contact was apparent

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> to a reasonable complainant, and that the plaintiff apprehended imminent harm: *Silbernagel v. Ritchie* (1994), 2 B.C.L.R. (3d) 147 at paras. 26, 27 (S.C.).

[109] I agree with the AGC that the plaintiff's pleading of assault in para. 6 of Part 3 does not address these elements, and particularly the elements of intentionality and of imminent apprehension of harm.

Claims Against the FHA

[110] The FHA asserts that the doctors who dealt with the plaintiff are not FHA employees. However, it proffered no evidence with respect to that. I acknowledge that, in most cases that come before this court, doctors are dealt with separately from hospitals and health authorities. Most doctors practice in hospitals pursuant to hospital privileges, billing the Medical Services Plan separately for their work. However, I do not know whether that is an invariable rule, and it is not something I see as appropriate for the taking of judicial notice.

[111] In the circumstances, I do not see it as reasonable to finally dispose of claims on the basis that the FHA is not vicariously liable for the doctors. I suspect that the doctors' employment status is a question that can be independently verified. In my view, it would be appropriate for the plaintiff to be in contact with counsel for the FHA with respect to that question. If it turns out that none of the doctors are in a position for which the FHA would be vicariously liable, then the plaintiff will need to consider whether she has an independent claim against any one or more of the doctors and if so, whether she wishes to pursue that claim.

[112] In any event, it is clear that some of the plaintiff's claims implicate the conduct of other FHA staff.

[113] I agree with the FHA that the plaintiff has failed to address the statutory immunity found in s. 16 of the *Mental Health Act*. That said, the immunity is limited to circumstances in which the person whose conduct is in issue has acted "in good faith and with reasonable care". In my view, and assuming the plaintiff believes it to be the case, the plaintiff should have pleaded that the various FHA employees

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whose conduct is in issue did not act in good faith or with reasonable care, and set out the material facts that she says underlie that pleading.

[114] This same comment would apply to the claims in respect of the RCMP officers to the extent that they (or an entity vicariously liable for them) seek to rely on s. 16 of the *Mental Health Act*.

[115] The reliance of the FHA on deemed consent pursuant to ss. 8 and 31 is a more complex question. It is not clear to me whether the good faith and reasonable care requirements of s. 16 are implicitly imported into questions relating to whether deemed consent is given. It would seem to me that the deemed consent must be subject to some limitations. Whether the limitations are circumscribed by the introductory words of s. 16, or whether they are circumscribed by the purposes of the specific treatments the plaintiff is deemed to have consent to, are questions as to which no authority was cited to me, nor was it clearly addressed in either party's application materials. In my view, it is not a question appropriately decided on a Rule 9-5 application.

[116] I accept that the FHA is correct that the plaintiff's privacy claim should probably be brought pursuant to the *Privacy Act*, R.S.C. 1985, c. P-21, given that there does not appear to be an available common law tort in British Columbia at this time.

[117] I further accept that the FHA is correct that the plaintiff has failed in the FANOCC to address the specific elements of each claim. I note the concise summary of elements of some similar claims in *Lover-Peace*:

> [35] To establish liability for negligence, a plaintiff must demonstrate that: (a) the defendant owed them a duty of care; (b) the defendant's behaviour breached the standard of care; (c) the plaintiff sustained damage; and (d) that damage was caused by the defendant's breach, in fact and law: *Bevan v. Husak*, 2024 BCCA 323 at para. 84.
>
> [36] The tort of intentional infliction of mental suffering requires proof of: (a) flagrant or outrageous conduct that was (b) calculated to produce harm and (c) resulted in a visible and provable illness: *Kindylides v. Does*, 2020 BCCA 330 at para. 44, leave to SCC ref'd, 39728 (14 October 2021), citing

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> *Prinzo v. Baycrest Centre for Geriatric Care* (2002), 60 O.R. (3d) 474 at para. 48, 2002 CanLII 45005 (C.A.).
>
> [37] Liability for alleged violations of s. 7 and s.12 of the *Charter* requires proof of a deprivation of life, liberty, or security of the person that does not accord with the principles of fundamental justice and cruel and unusual treatment or punishment within the meaning of s. 12. Obtaining damages as a remedy under s. 24(1) of the *Charter* may attract additional burdens: *Named Persons v. Canada (Attorney General)*, 2025 BCCA 197 at paras. 103, 148–149.

[118] It is however my view that, if given an opportunity, the plaintiff may well be able to address the missing elements of the claims pleaded through a revision to the FANOCC.

Conclusions on Rule 9-5 Applications

[119] In my view, Part 1 of the FANOCC clearly reflects the origins that the plaintiff described: that is, her attempt to provide a complete chronicle of her experiences on April 23–24, 2025. The problem is that, as a result of these origins, it contains a significant amount of material that is not really necessary to the legal claims advanced in the FANOCC. In my view, the pleading would be substantially improved by the plaintiff starting from the specific torts and statutory claims she wishes to plead, coupled with the statutory issues that were identified in the materials filed by the defendants (including those arising from ss. 8, 16 and 31 of the *Mental Health Act* and ss. 11 and 21 of the *Police Act*). The plaintiff would then be in a position to identify the material facts that are necessary to support those claims, and reconsider the extent of the narrative in Part 1 in that light.

[120] By way of specific comments on Part 1 as set out in the FANOCC, I would note that:

a) Paras. 1 and 4 deal with evidentiary matters that do not relate to issues in the case and are not necessary;

b) Words such as “to the plaintiff’s observation” in paras. 13 and 32 are unnecessary, as they tend to suggest that what follows is evidence rather than the statement of a material fact;

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c) Without coming to a final conclusion, I would say that paras. 23, 26, 27 and 38 all appear to be more in the nature of evidence than material facts;

d) Para. 42 might relate to a material fact if the statements referenced in that paragraph are alleged to be untrue, but the pleading does not state that;

e) More generally, the detailed description of the hospital admission process at paras. 39–46 is largely in the nature of evidence; although there may be a handful of material facts within those paragraphs, those material facts could likely be drawn out and summarized;

f) The plaintiff's reference at paras. 48–49 to a brief discussion with Legal Aid does not appear to be a material fact related to any of the allegations made;

g) Paras. 50–82 constitute a detailed summary of the events of the evening of April 23 and the morning of April 24, 2025 – some of the specific facts underlying the plaintiff's allegations are contained within paras. 65, 71 and 79–82, but it is clear to me that overall this detailed summary of events goes beyond putting forward material facts and includes significant amounts of what is properly described as evidence;

h) More generally with respect to those paragraphs, while there are several references to the plaintiff's interactions with the doctors, I am unable to discern whether the plaintiff believes that there was any breach of duty by any of the doctors, much less whether any such breach of duty would not be "in good faith and with reasonable care" (to use the language of s. 16 of the *Mental Health Act*);

i) I see the plaintiff's summary at paras. 83–96 of the impacts on her of her experiences on April 23–24, 2025, as being relevant; however, I see the paragraphs as a whole as constituting evidence. While there are material facts in these paragraphs, those material facts are capable of being pulled out from the evidence and set forth in a more concise manner.

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[121] In my view, Part 1 of the FANOCC contains substantial amounts of evidence and unnecessary allegations. It is appropriately struck out with leave to amend. Given the extent of the amendments that are contemplated by the above review, I believe it appropriate to relieve the plaintiff from the need to use strikeouts and underlining pursuant to Rule 6-1(3) with respect to Part 1.

[122] For the reasons set out above, it is my view that Part 3 of the FANOCC also needs to be substantially amended to address the defects identified in my discussion of the specific claims made against the AGC and the FHA. I would strike out Part 3, with leave to amend. I anticipate that the amended Part 3 will address the statutory issues addressed above as well as the specific elements of the common law claims that are pleaded. It should also concisely summarize in respect of each claim the key material facts that address the elements of those statutory provisions and common law claims.

[123] I do not anticipate the changes to Part 3 to be as substantial as those that are required in Part 1 – as a result, I believe it is appropriate for the plaintiff to comply with Rule 6-1(3). I note for the plaintiff's benefit, however, that what is required by Rule 6-1(3) is not to strike out the entirety of a paragraph to which additions or deletions are being made. Rather, Rule 6-1(3) contemplates that only specific words that are deleted be marked by strikethrough, and only the specific words that are being added be indicated by underlining.

Summary Judgment

Rule 9-6 – Legal Principles

[124] Rule 9-6(4) and (5) provides that:

> (4) In an action, an answering party may, after serving a responding pleading on a claiming party, apply under this rule for judgment dismissing all or part of a claim in the claiming party's originating pleading.
>
> (5) On hearing an application under subrule (2) or (4), the court,
>
> (a) if satisfied that there is no genuine issue for trial with respect to a claim or defence, must pronounce judgment or dismiss the claim accordingly,

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(b) if satisfied that the only genuine issue is the amount to which the claiming party is entitled, may order a trial of that issue or pronounce judgment with a reference or an accounting to determine the amount,

(c) if satisfied that the only genuine issue is a question of law, may determine the question and pronounce judgment accordingly, and

(d) may make any other order it considers will further the object of these Supreme Court Civil Rules.

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[125] As noted by Justice Sharma in *Latifi* at paras. 52, 54–58 and 62:

> [52] The bar on a motion for summary judgment is high: a defendant that seeks summary dismissal bears the evidentiary burden of showing that there is “no genuine issue of material fact requiring trial”, to ensure that “claims that have no chance of success be weeded out at an early stage”: *Canada (Attorney General) v. Lameman*, 2008 SCC 14 at paras. 10–11; *Drummond v. Moore*, 2012 BCSC 496 at para. 25.
>
> …
>
> [54] The analysis under Rule 9-6(5)(a) focusses on whether the claim is without merit such that there is no genuine issue to be tried based on the material, including evidence.
>
> [55] As set out in *Xiao v. Fan*, 2020 BCSC 69 at para. 46, a judge hearing a summary judgment application must examine the pleaded facts to determine what causes of action they may support, including identifying the elements of each cause of action and whether the necessary material facts have been pleaded. If insufficient material facts have been pleaded such that it is beyond a doubt that the cause of action is bound to fail, then the defendant has met its onus, and the claim must be dismissed.
>
> [56] However, if sufficient material facts have been pleaded, the issue becomes whether the evidence adduced at the hearing is clear that there is no genuine issue for trial. A "genuine issue for trial"—sometimes referred to as a "*bona fide* triable issue"—may be one of fact or of law in the sense that a *bona fide* triable issue arises on the material before the court in the context of the applicable law.
>
> [57] A genuine issue of fact arises from a material conflict in the evidence, although Rule 9-6 is still available where there are disputed facts in the pleadings: *McLean v. Law Society of British Columbia*, 2016 BCCA 368 at para. 36; *Lameman* at para. 11. Each party must put its “best foot forward” as to the existence or non-existence of material issues and the underlying materials facts: *Lameman* at para. 11; *McLean* at paras. 36, 38; *Pantusa* at para. 58.
>
> [58] Accordingly, summary judgment cannot be defeated by vague references to what may be adduced in the future. Rather, it is judged on the basis of the pleadings and materials actually before the court, although the judge may make inferences of fact based on undisputed facts strongly supporting such inference: *Lameman* at paras. 11, 19.
>
> …

> [62] … where the facts are contested, the court must not weigh evidence beyond determining whether it is incontrovertible. If further weighing is needed, then the "plain and obvious" or "beyond a doubt" test has not been met: *Aubichon v. Grafton,* 2022 BCCA 77 at para. 30, citing *Beach Estate v. Beach,* 2019 BCCA 277 at para. 49; *Skybridge Investments Ltd. v. Metro Motors Ltd.*, 2006 BCCA 500 at paras. 8–12; *Tran v. Le*, 2017 BCCA 222 at para. 2.

Analysis

[126] I have noted above my concerns about the evidence that has been provided with respect to the key events of April 23–24, 2025. I have significant concerns about the purported use of the business records exception to put forward hearsay evidence of the individuals whose conduct is in issue. As well, I accept the plaintiff's submission that there are some inconsistencies between the various written records that give rise to further concerns about a summary dismissal.

[127] In addition, for the reasons noted above:

a) I do not accept that the claims should be dismissed on the basis that the AGC is not liable for the actions of the RCMP members in issue. Rather, the plaintiff should be given an opportunity to address the question of whether the claims advanced are appropriately pleaded in a manner that brings them within s. 21(3)(a) of the *Police Act*.

b) I believe that the plaintiff should be given an opportunity to amend the pleadings in a way that would address the statutory defences raised by FHA pursuant to the *Mental Health Act* in respect of deemed consent and the statutory s. 16 immunity.

[128] Finally, it is my view that given the complex technical statutory issues raised on this application, it is appropriate to provide the plaintiff with an opportunity to consider whether she should be applying to add additional defendants such as the doctors – if as suggested in submissions they are not persons for whom FHA is vicariously liable. With respect to the RCMP officers, the plaintiff may want to consider either adding the provincial government as a defendant or perhaps even

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potentially seek to substitute it as a defendant. I assume that the plaintiff was not aware of s. 11 of the *Police Act* when she initially identified the defendants to this action. By raising this possibility, I am in no way deciding that an application to do so will be successful – that will be a matter for the judicial officer hearing such application, if contested.

[129] Thus, I would not grant the summary judgment application.

Security for Costs

Legal Principles

[130] Justice Dillon reviewed the legal principles governing applications for security for costs against individuals in *Han v. Cho*, 2008 BCSC 1229:

> [14] The longstanding basic rule that has applied with respect to an order for security for costs against an individual is that a natural person can sue without giving security for costs in any but excepted cases. The rule flows from the principle that poverty is not a bar to access to the courts. This is the "true principle" referred to by Lambert J.A. in *Shiell* at p. 261. More recently, this basic principle has been enunciated as the right of citizens to have access to the courts, a fundamental theme of recent debate surrounding changes to the Rules of Court …
>
> …
>
> [26] … exercise of the discretion involves a balancing of injustices: the possibility of stifling a legitimate claim versus the use of impecuniosity as a means of pressure on a defendant. Balancing of injustice is always a factor in the exercise of judicial discretion. Most cases involving individual claimants have found consideration of the strength of the merits of the claim or defence to be a valid consideration (*Tordoff* at p. 52). Other principles cited in *Kropp* such as the ability to order lesser security than the full amount and consideration of delay in making an application do not detract from the fundamental distinction.
>
> [27] The onus is on the applicant to establish that he or she will be unable to recover costs (*Bronson #1* at para. 45). The fact that the plaintiff resides outside the jurisdiction, has no assets within the jurisdiction, or is impecunious, is not sufficient in itself. The power to order security for costs against an individual is to be exercised cautiously, sparingly, and only under special circumstances, sometimes described as egregious circumstances. Such special circumstances could arise if an impecunious plaintiff also has a weak claim, or has failed to pay costs before, or refused to follow a court order for payment of maintenance.

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[131] These principles were approved in *Ocean Pastures Corporation v. Old Masset Economic Development Corporation*, 2016 BCCA 12. In *Ocean Pastures*, the Court also approved the following explanation of the reason for the distinction between individual and corporate plaintiffs, from *Bronson v. Hewitt*, 2007 BCSC 1751:

> [41] … For good reason, individual and corporate plaintiffs have always been treated differently. Absent special circumstances, corporate shareholders are entitled to avail themselves of the protection of a limited liability company to avoid personal exposure for costs: [citation omitted]. An order for security for costs prevents the principals of a corporate plaintiff from hiding behind the corporate veil and, as noted by Megarry V.C. in *Pearson*, protects "the community against litigious abuses by artificial persons manipulated by natural persons."
>
> [42] With individuals, the fundamental concern has always been access to the courts. Access to justice is as important today as it was in 1885 when Lord Bowen declared in *Cowell* that "the general rule is that poverty is no bar to a litigant". Individuals, no matter how poor, have always been granted access to our courts regardless of their ability to pay a successful defendant's costs. Only in egregious circumstances have individuals been ordered to post security for costs.

[132] In *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 273, Justice Warren (as she then was) suggested the following approach to considering a claim for security for costs against an individual plaintiff:

> [23] Given the purpose of an order for security for costs, it is sensible to commence the analysis by determining whether the applicant has established, at least on a *prima facie* basis, that in the event of its success it will be unable to recover its costs. This has been referred to as the "threshold" requirement: *Equustek Solutions Inc. v. Jack*, 2013 BCSC 2135 at paras. 25-31.
>
> [24] If an applicant for security for costs meets that threshold requirement, then it is necessary to assess the risk of a legitimate claim being stifled. This requires a consideration of all the relevant factors present in the case in question, including the ability of the plaintiff to post the security sought and the merits of the plaintiff's claim. If it is plain and obvious that the claim lacks merit then the concern not to frustrate legitimate claims is engaged with less force. If there is no reason to believe that the plaintiff's ability to continue the claim will be impeded if ordered to post security, then the concern to ensure that poverty is not a bar to legitimate access to the courts does not arise. If there is a real risk that an order for security for costs will make it difficult for the party against whom security is ordered to continue with the claim, then it is necessary to consider whether egregious circumstances exist that would

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> tip the balance in favour of making the order even though the claim might be stifled.

Analysis

[133] The plaintiff is currently subject to a consumer proposal, by which most of her disposal income is directed to payment of creditors. The consumer proposal predates the events giving rise to this legal action. While this clearly impacts on the extent of funds currently available to the plaintiff, it reflects at the same time an effort to improve her financial situation, as do the steps she is taking to have her professional qualifications recognized in British Columbia. As a result, it is not clear that her lack of available funds is a permanent condition.

[134] While the plaintiff's claims are complex and technical, I do not conclude that it is plain and obvious that the claims lack merit.

[135] While the plaintiff had not yet, at the time of the hearing before me, paid the two prior costs awards, she had taken steps to arrange payment, with the AGC failing to respond to her inquiries.

[136] It is my view that this is not an appropriate case for an order for security for costs pursuant to the court's inherent jurisdiction to grant security for costs against an individual. I accept that a requirement to post security for costs would in all likelihood prevent the plaintiff from pursuing this claim and effect an inappropriate constraint on access to justice.

Conclusion

[137] For the reasons set out above, I grant in part the orders sought by the defendants pursuant to Rule 9-5(1). I order that Parts 1 and 3 of the FANOCC be struck out, but with leave to amend in accordance with the directions I have given above. I also order that, with respect to the amendments to Part 1, the plaintiff is relieved from the requirement to indicate changes to the wording through strikeouts and underlining.

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[138] I accept that the plaintiff may well have valid claims in respect of both the police officers and the hospital staff she dealt with. If the plaintiff is able to reframe her claims to address the issues discussed in this judgment, she is entitled to pursue those claims.

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[139] In addition, for the reasons set out above, I dismiss the applications for:

a) The action to be dismissed by way of summary judgment pursuant to Rule 9-6, and

b) An order requiring the plaintiff to post security for costs.

[140] With respect to the costs of the present applications, it is my view that success on these applications has been mixed and it is appropriate to order that the parties bear their own costs.

[141] I have a few comments to add for the plaintiff's consideration, which are not part of my determination of the pleadings issues raised:

a) Statutory provisions like s. 16 of the *Mental Health Act* as well as s. 25 of the *Criminal Code*, R.S.C. 1985, c. C-46 (which is pleaded in the AGC's Response to Civil Claim, although not directly raised on the present applications) reflect the reality that those involved in law enforcement and those dealing with people experiencing mental health crises are having to evaluate, assess and react to situations in real time and often with only partial understanding of the situation. These provisions limit the extent to which claims may be pursued against such persons, and thereby reflect a public policy that, within specified bounds, the conduct of those individuals will be reviewed with their need to respond quickly to exigent circumstances in mind.

b) As can be seen from the complex issues raised in respect of the FANOCC, the various statutory provisions that govern liability in a case, which are in large part a reflection of that public policy, create a complex

and technical legal framework that will be particularly challenging for a self-represented litigant.

c) While I accept that the plaintiff firmly believes that some of the conduct she experienced was motivated by discriminatory attitudes toward transgender persons, proving that to be the case – particularly in light of the statutory protections granted to police officers and those working in a mental health facility – will be challenging.

d) Finally, while I have not ordered security for costs, the plaintiff should be aware from the material filed of the possible magnitude of a claim for costs that might be advanced against her if this matter goes to a trial and she is unsuccessful. While there are exceptions, the usual rule is that a party who is successful at trial is entitled to their tariff costs of the action. Multiple separately represented parties will often have separate claims for costs. And while the plaintiff may not have substantial assets at present, my sense is that she is working towards career goals and toward financial prosperity. The risk of an eventual adverse costs award is something that anyone embarking on a civil claim like this should seriously consider.

[142] These are matters for the plaintiff herself to consider. They do not bear upon the decisions I have made on the applications before me.

“Veenstra J.”

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