

COURT OF APPEAL

ON APPEAL FROM THE SUPREME COURT OF BRITISH COLUMBIA,
FROM THE ORDER OF THE HONOURABLE MR. JUSTICE N. SMITH,
PRONOUNCED ON THE 2ND DAY OF AUGUST 2013.

BETWEEN:

RON KORKUT

**APPELLANT
(Plaintiff)**

AND:

TIMOTHY E. MCGEE

**RESPONDENT
(Defendant)**

TRANSCRIPT

Ron Korkut, Appellant

Timothy McGee, Respondent

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In the Supreme Court of British Columbia
(BEFORE THE HONOURABLE MR. JUSTICE N. SMITH)

Vancouver, B.C.
August 2, 2013

BETWEEN:

RON KORKUT

PLAINTIFF

AND:

TIMOTHY MCGEE

DEFENDANT

PROCEEDINGS IN CHAMBERS

Appearing on his own behalf:

Ron Korkut

Counsel for the Defendant:

M. Armstrong

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Proceedings

Vancouver, B.C.

August 2, 2013

1
2
3
4 THE CLERK: In the matter of Korkut versus McGee, My
5 Lord.
6 THE COURT: Yes.
7 MR. ARMSTRONG: My Lord, Armstrong, initial M., for the
8 defendant, Timothy McGee.
9 THE COURT: Yes. Sir?
10 RON KORKUT: Ron Korkut, representing myself.
11 THE COURT: All right.
12 RON KORKUT: Plaintiff.
13 THE COURT: Thank you. Yes, you can sit down, sir.
14

SUBMISSIONS FOR DEFENDANT BY MR. ARMSTRONG:

15
16
17 MR. ARMSTRONG: My Lord, this is an application to
18 strike or dismiss this action pursuant to Rules
19 9-5 and/or 9-6 of the *Supreme Court Civil Rules*.
20 I'm not sure if you've had a chance to look at the
21 Notice of Civil Claim.
22 THE COURT: No, I haven't.
23 MR. ARMSTRONG: Okay. I have -- I have a brief of
24 authorities, and tucked in the inside of -- pocket
25 is a copy of the pleading and a copy of the two
26 rules that we're relying on. And it won't take
27 long to go through the Notice of Civil Claim.
28 Perhaps --
29 THE COURT: Mm-hmm.
30 MR. ARMSTRONG: -- should start there. The premise of
31 the application is that the Notice of Civil Claim
32 is frivolous, vexatious, and an abuse of process,
33 and does not state a cause of action. That would
34 be the application under Rule 9-5, and that under
35 Rule 9-6, it doesn't state a bona fide issue for
36 trial.
37 Mr. Korkut is -- I believe has an engineering
38 background, and I believe he's an instructor at
39 Langara.
40 RON KORKUT: BCIT.
41 MR. ARMSTRONG: BCIT. He says that, in his statement
42 of facts, that he was involved in a motor vehicle
43 collision in March of 2009, and that the driver
44 that caused the accident left the scene of the
45 accident, and therefore it was a hit-and-run type
46 collision, that Mr. Korkut's vehicle was
47 substantially damaged, and that as a result of the

Submissions for Defendant by Mr. Armstrong

1 fact that it was a hit-and-run collision he was
2 compensated by ICBC pursuant to its uninsured or
3 unknown motorist provisions.
4 He alleges in paragraph 1 that ICBC -- this
5 is in the bolded words: "ICBC assumed the
6 liability of the hit-and-run crime Stuart Taylor
7 [phonetic], the other driver, committed, and
8 rewarded him by paying the cost of the car he
9 destroyed as if it was an ordinary accident."
10 So Mr. Korkut was compensated for the damage
11 to his vehicle, but he objects to that because he
12 doesn't think ICBC should be effectively
13 compensating the hit-and-run driver by
14 compensating for the damage the hit-and-run driver
15 caused.
16 THE COURT: So Mr. Taylor was compensated for his
17 vehicle?
18 MR. ARMSTRONG: No. Mr. Korkut's vehicle was damaged.
19 Mr. --
20 THE COURT: Right.
21 MR. ARMSTRONG: -- Taylor was the hit-and-run driver --
22 THE COURT: Right.
23 MR. ARMSTRONG: -- who was subsequently identified.
24 THE COURT: Right. And . . . ?
25 MR. ARMSTRONG: ICBC, under its unknown motorist
26 provision section of the *Insurance Vehicle Act*.
27 THE COURT: Oh, rewarded him by paying the cost of the
28 car he destroyed. Okay.
29 RON KORKUT: Yes. Now, Mr. Korkut had no recourse
30 against Mr. Taylor, because he was unknown at the
31 time.
32 THE COURT: Right.
33 MR. ARMSTRONG: ICBC compensated Mr. Korkut for his
34 loss. Mr. Korkut accepted the funds but has an
35 issue with the fact that ICBC is effectively, he
36 says, compensating the hit-and-run driver by
37 assuming that hit-and-run driver's liability.
38 THE COURT: Okay.
39 MR. ARMSTRONG: He alleges in paragraph 2 -- and some
40 of these things aren't really facts, they're
41 conclusions -- but he says that he feels he has a
42 legal obligation and a civic duty to take legal
43 action against ICBC because it is impossible to
44 prevent crime if victims fail to take legal action
45 against the persons who are liable for their
46 suffering.
47 Paragraph 3, and this starts to get into the

Submissions for Defendant by Mr. Armstrong

1 meat of what his complaint is with respect to
2 Mr. McGee, he says, "Lawyer's duty to provide
3 legal service to the public." The plaintiff
4 needed legal advice to file his case, because it
5 was a criminal case. He wanted to start an action
6 or a criminal proceeding against, I guess, ICBC,
7 or Mr. Taylor, the other driver.

8 RON KORKUT: ICBC only.

9 MR. ARMSTRONG: ICBC.

10 THE COURT: Sorry, the action was against I -- he
11 want -- oh, okay, go ahead.

12 MR. ARMSTRONG: He wanted to institute criminal
13 proceedings against ICBC for paying him,
14 Mr. Korkut, for the damage to his vehicle, and he
15 thought that a lawyer would have to duty to assist
16 him in that regard.

17 Paragraph 4 is headed, "Breach of the rules
18 of professional conduct, obstruction of justice."
19 Mr. Korkut alleges that he consulted with ten
20 different lawyers referred to him by the
21 Lawyer -- Lawyer Referral Service to file his
22 legal action, and all ten of them declined to give
23 him the name of the legal form necessary for
24 filing a criminal case, despite the fact that he
25 was willing to pay for their service, and he
26 thought that was tantamount to obstruction of
27 justice by those ten lawyers.

28 Paragraph 5, he says before filing
29 disciplinary action against the ten lawyers, he
30 decided to find out if the Law Society was willing
31 to investigate his complaint about the
32 professional obligations of the ten lawyers, and
33 so he started a bit of a letter campaign with the
34 Law Society, and he asked various people at the
35 Law Society to advise him whether or not they
36 considered that lawyers had a professional
37 obligation to provide legal services to victims of
38 crime, such as him. You will see in the affidavit
39 the series of letters that were written to various
40 people at the Law Society.

41 The Law Society basically responded to him in
42 various ways, saying, Mr. Korkut, a lawyer does
43 not have an obligation to accept any particular
44 retainer from a particular client, even if the
45 client is prepared to pay, and you have no cause
46 of action against us, and if you wish to basically
47 file a complaint against a lawyer, you may do so,

Submissions for Defendant by Mr. Armstrong

1 and the Law Society will look into that. But in
2 the meantime, advice was given that if -- to -- if
3 he couldn't find a lawyer, he was given
4 information to go to the Pro Bono Society. On one
5 occasion he was given information as to how he
6 could go to the Lawyer Referral Service of the
7 Canadian Bar Association, and that sort of thing.

8 Gradually he worked his way up the chain at
9 the Law Society. He started with Mr. Bilinsky
10 there, and when he didn't get satisfaction from
11 Mr. Bilinsky he wrote to others, including
12 Mr. Getz, who is a bencher, and ultimately it
13 found its way onto the desk of Tim McGee, who is
14 the executive director of the Law Society, who
15 basically just wrote back eventually to him
16 saying, look, the information you're being
17 provided by the people elsewhere in the Law
18 Society is correct; lawyers don't have an
19 obligation to take your retainer, even if you're
20 prepared to pay.

21 RON KORKUT: Well, objection, Your Honour. This is
22 always wrong. I never tried to retain a lawyer.

23 THE COURT: Well, all right. I'll hear from you
24 afterwards.

25 MR. ARMSTRONG: That takes us down to paragraph 8 in
26 the Statement of Facts, where Mr. Korkut says the
27 Law Society represented by Mr. McGee failed to
28 enforce the *Code of Professional Conduct* for B.C.,
29 and he says he was therefore unable to file his
30 cases, criminal case against ICBC. And he
31 mentions the fact that there are a number of hit-
32 and-run crashes, and statistics, in British
33 Columbia, and that he has suffered from
34 obstruction of justice.

35 In the relief sought he seeks a court order
36 to remind the Law Society executive director
37 Mr. Timothy McGee that the lawyers have
38 professional obligations to provide legal service
39 to the public, and the Law Society has a duty to
40 enforce it to ensure that professional legal
41 advice is available for the victims of crime in
42 order to bring their offenders to justice,
43 including the plaintiff. And he seeks
44 compensation for the frustration of the
45 obstruction of justice and breach of fiduciary
46 duty, as he puts it, of Mr. McGee.

47 In the Response to Civil Claim, Mr. McGee

Submissions for Defendant by Mr. Armstrong

1 obviously does not agree with the rendition of
2 facts of Mr. Korkut. There's an objection that
3 some of the statements in the Statement of Facts
4 of the Notice of Civil Claim aren't statements of
5 fact at all, but conclusions, legal conclusions
6 without foundation. And he says -- he goes
7 through the -- in division two, the nature of the
8 allegation of Mr. Korkut, the fact that Mr. Korkut
9 had contact through a number of lawyers to obtain
10 advice as to the legal form or forms necessary to
11 file a criminal complaint, and the reference to
12 the series of correspondence that he engaged in
13 with the Law Society from April to December 2012
14 on that topic.

15 He says in paragraph 4 that in response to
16 the correspondence the plaintiff was advised on
17 numerous occasions that the Law Society is not in
18 a position to provide legal advice to him, that
19 lawyers are not ethically or professionally
20 required to accept particular retainers offered to
21 them, that lawyers do not have an obligation to
22 help a victim to facilitate the punishment of a
23 criminal offender, and that if the plaintiff
24 wished to make a complaint against a specific
25 lawyer, he could do so, and any complaint would be
26 considered. The plaintiff was also provided
27 contact information for lawyer referral services
28 and for the access Pro Bono Society of B.C., as
29 well as other information as to the function of
30 the Law Society. And there's a reference to the
31 correspondence from Mr. McGee.

32 Now, the correspondence itself, it's
33 not -- doesn't take much time to read it, because
34 it's quite repetitive, but it's attached to the
35 affidavit of Hazel Tang, which is at Tab 2 in the
36 application record. Hazel Tang is a legal
37 administrative assistant of my office.

38 And I apologize, the exhibits aren't
39 numbered, but they are sequential in date. The
40 first letter you can see there, My Lord, is April
41 3, 2012, from Mr. Korkut, and it's addressed to
42 David Bilinsky, the Practice Management Advisor of
43 the Law Society, and Mr. Korkut says what he says
44 in that letter, which is he's asking whether
45 lawyers in his circumstances have an ethical and
46 professional obligation to provide the
47 information, which is the form he wanted for

Submissions for Defendant by Mr. Armstrong

1 starting a criminal prosecution, or a professional
2 obligation to discourage the victim by telling him
3 that ordinary citizens cannot file criminal action
4 against another person. He got a response to that
5 letter a few days later, April 12, 2012, written
6 by Alan Treleaven, the Director of Education and
7 Practice, Law Society. He was referred to the
8 lawyer referral program. In the third paragraph
9 Mr. Treleaven says, "A lawyer is not required to
10 take on a particular matter, even if the potential
11 client has offered to pay. Potential client
12 sometimes must contact more than one lawyer before
13 finding -- finding one willing to provide the
14 requested legal services." And he said that if
15 Mr. Korkut wanted to advance a complaint, the Law
16 Society would investigate it to consider whether
17 disciplinary procedures were warranted.

18 Mr. Korkut followed a couple days later with
19 another letter, April 15, 2012, this time
20 directing his letter to Alan Treleaven directly,
21 asking the same question again. On April 18th,
22 Mr. Treleaven responded, basically repeating what
23 he had said before, a lawyer has no ethical or
24 professional obligation to take on a particular
25 matter, et cetera, and that Mr. Korkut was free to
26 contact other lawyers if he wished.

27 April 20th, Mr. Korkut wrote again to
28 Mr. Treleaven, thanking him for his response,
29 seeking clarification of the response. In the
30 second to last paragraph it appears that his
31 complaint is not really just against lawyers.
32 It's against every citizen. He says, "Never mind
33 the professional ethics of lawyers. Every citizen
34 has an obligation to help and provide any
35 information they know to a victim of a crime that
36 is necessary for the punishment of the criminal."
37 However -- sorry. "Otherwise the criminal gets
38 away with his or her crime. Correct me if I am
39 wrong."

40 May 1st, Mr. Treleaven writes back again,
41 repeating what he had said before, repeating the
42 reference to the Lawyer Referral Service, and also
43 referring him to the website of the Trial Lawyers
44 Association for assistance.

45 On May 3rd Mr. Korkut wrote, this time going
46 back to David Bilinsky at the Law Society, asking
47 essentially the same question he had asked at the

Submissions for Defendant by Mr. Armstrong

1 beginning, and asking Mr. Bilinsky whether he
2 agreed with Mr. Treleaven's response.

3 On May 16th Mr. Treleaven responded again to
4 Mr. Korkut, confirming the accuracy of what he had
5 said before and again referring Mr. Korkut to the
6 CBA lawyer -- Lawyer Referral Services, as well as
7 the Trial Lawyers Association.

8 Mr. Korkut then wrote a letter to Leon Getz,
9 who I gather is a chair of the Ethics Committee of
10 the Law Society, and a bencher, raising a similar
11 issue, mentioning Mr. Stuart [sic], who was
12 involved in this hit-and-run accident but
13 apparently never charged criminally, saying in the
14 fourth paragraph that, "ICBC had officially
15 accepted the liability of the crime by paying me
16 for the replacement of the car, my car," alleging
17 that ICBC was guilty of providing financial
18 support to a hit-and-run criminal under the title
19 of accident insurance benefits, saying on the next
20 paragraph that he considered he had a legal
21 obligation to file a criminal action against ICBC,
22 and in the next paragraph saying he needed to know
23 what form to fill out, and that he'd asked ten
24 lawyers for that information and had not received
25 what he wanted.

26 Over the next page he indicates that those
27 lawyers together with every citizen had duty to
28 him to provide information to him, and he asks
29 Mr. Getz again questions similar to what he had
30 asked of Mr. Treleaven and Mr. Bilinsky
31 previously.

32 He followed up with a reminder on June 24,
33 2012, he hadn't received a response by then from
34 Mr. Getz.

35 On June 25, 2012 he got a response from Jack
36 Olsen, a staff lawyer in the Ethics Department of
37 the Law Society, who again reiterated that a
38 lawyer has no obligation to help a victim to
39 facilitate the punishment of a criminal offender.

40 June 28th, Mr. Korkut resumed his
41 correspondence with Mr. Getz, asking him for a
42 response directly. Mr. Getz responded on July
43 24th, saying he had read the correspondence that
44 preceded his letter, and that he agreed with the
45 information provided to Mr. Korkut by Mr. Olsen
46 and Mr. Treleaven.

47 On July 24th, Mr. Korkut wrote again to

Submissions for Defendant by Mr. Armstrong

1 Mr. Getz, basically repeating the question he'd
2 asked earlier, and wrote again on July the 29th,
3 and October the 8th.

4 He didn't get a response to those letters, it
5 appears, so he then wrote a letter to his final
6 person up the chain, Timothy McGee, who is the
7 executive director of the Law Society, and he asks
8 the same question basically that he had asked
9 Mr. Getz, Mr. Treleaven, and Mr. Bilinsky.

10 He received a response November 16th from
11 Lynne Knights, the intake officer, Professional
12 Conduct Department. Ms. Knights tried to assist
13 him. She enclosed a brochure which described the
14 function of the Law Society, because members of
15 the public sometimes believe the Law Society is
16 there to provide legal advice to people. It's
17 not. It's there to govern the profession and to
18 fulfill other functions, but it does not provide
19 legal advice to individual members of the public.
20 So that's what the brochure would have been
21 designed to tell Mr. Korkut.

22 She also suggested that perhaps he research
23 his issue online or in a law library, and referred
24 him to the Pro Bono Society of B.C., and provided
25 a brochure describing the Pro Bono Society. She
26 apologized she could not be of more assistance.

27 Mr. Korkut followed up with a letter,
28 November 20, 2012, to Timothy McGee, referring to
29 Lynne Knights' response, saying she had ignored
30 his question to her, or to Mr. McGee but answered
31 by her, and he sought an answer to his question.

32 He followed up with another letter, December
33 the 20th, to the same effect, and finally got a
34 letter from Mr. McGee on January 8, 2013, and this
35 is Mr. McGee's sole involvement in this. He
36 acknowledged receipt of Mr. Korkut's letter of
37 December 20th. He noted the previous
38 correspondence, and confirmed that what Mr. Korkut
39 had been told earlier was accurate, and he said he
40 couldn't assist further, and that any further
41 correspondence from Mr. Korkut would be placed in
42 his closed file at the Law Society.

43 Mr. Korkut then followed with the Notice of
44 Civil Claim, which was filed April 4, 2013, and I
45 was appointed to represent Mr. McGee in the
46 action, and filed the response.

47 I -- I did my best, as I do in cases like

Submissions for Defendant by Mr. Armstrong

1 this, to speak with the plaintiff and see if
2 something can be done to resolve the concern the
3 plaintiff has in this case, Mr. Korkut, and I
4 invited Mr. Korkut to meet with me. Mr. Korkut
5 agreed. We met on April 22nd, 2013, just a few
6 days after he had filed his Notice of Civil Claim.
7 I -- I tried to -- engaged him in a discussion
8 about the hit-and-run provision in the *Insurance*
9 *Vehicle Act* and the fact that the s. 24 of the Act
10 actually obliges ICBC to compensate victims of
11 hit-and-run accidents, it's a legislated function
12 of ICBC, and that ICBC is not compensating
13 when -- it's not compensating the criminal when it
14 does that; it's compensating the victim of the
15 hit-and-run accident. And furthermore, that ICBC
16 has the right, once it provides compensation on a
17 hit-and-run accident, to seek compensation itself
18 from the hit-and-run driver if it can identify the
19 hit-and-run driver.

20 And so I was trying to dispel this notion
21 that ICBC was somehow engaged in criminal conduct
22 by assisting a hit-and-run driver, that it was
23 actually a legislated statutory obligation of
24 ICBC. And I also discussed with Mr. Korkut the
25 way criminal charges work. It's -- usually
26 there's an investigation, but not all criminal
27 activity results in a criminal charge, and that
28 the fact that the hit-and-run driver in his case
29 my not have been charged, there may be a very good
30 reason for that.

31 I reiterated to him that unfortunately the
32 lawyers are not bound ethically or legally to take
33 on his case or to provide him legal assistance,
34 and I -- I made a proposal to him, which is
35 redacted from the letter. At the end of the
36 letter I actually set out s. 24 of the *Insurance*
37 *Vehicle Act*, the part that deals with ICBC's
38 rights and obligations under s. 24 of the Act, and
39 I set out a copy of Rule 9-5, striking scandalous,
40 frivolous, or vexatious matters, and I tried to
41 convince Mr. Korkut to back off in this
42 litigation. He did not want to do so, and so I'd
43 indicated if he wasn't prepared to back off, that
44 we would have to bring an application for
45 dismissal, and so that's why we're here today.

46 So it is the submission of Mr. McGee that the
47 Notice of Civil Claim does not state any

Submissions for Defendant by Mr. Armstrong

1 reasonable cause of action, or any cause of action
2 at all against him. Mr. McGee is strictly an
3 employee, as executive director of the Law
4 Society. He is protected from liability by s. 86
5 of the *Legal Profession Act*, which is at Tab 10 in
6 the brief of authorities I handed up.

7 The *Legal Profession Act* is the legislation
8 through which Mr. McGee is appointed as executive
9 director, and there are various functions of the
10 executive director set out in the Act. Section 86
11 says:

12
13 No action for damages lies against a person,
14 for anything done or not done in good faith
15 while acting or purporting to act on behalf of
16 the society or the foundation under this Act.

17
18 The only thing that Mr. McGee did is write a
19 letter to Mr. Korkut, in which letter he simply
20 said the people you have spoken to previously at
21 the Law Society are correct, and we're going to
22 close your file.

23 Rule 9-5 of the *Supreme Court Civil Rules*
24 says that:

25
26 At any stage of a proceeding, the court may
27 order to be . . .

28
29 Do you have a copy of that, My Lord?

30 THE COURT: Mm-hmm.

31 MR. ARMSTRONG:

32
33 . . . the court may order to be struck out or
34 amended the whole or any part of a pleading,
35 petition or other document on the ground that,

36
37 . . . it discloses no reasonable claim or
38 defence, as the case may be,

39
40 . . . it is unnecessary, scandalous,
41 frivolous or vexatious,

42
43 . . . it may prejudice, embarrass or delay the
44 fair trial or hearing of the proceeding, or

45
46 . . . it is otherwise an abuse of the process
47 of the court,

Submissions for Defendant by Mr. Armstrong

1 and the court may pronounce judgment or order
2 the proceeding to be stayed or dismissed and
3 may order the costs of the application to be
4 paid as special costs.
5

6 It goes on to say that:
7

8 No evidence is admissible . . . under subrule
9 (1)(a).
10

11 Which is the no reasonable claim part of the rule.
12 Evidence is admissible under the other subrules,
13 scandalous, frivolous, vexatious, abuse of the
14 process of the court, et cetera.

15 The Law Society -- or, sorry, Mr. McGee applies
16 under subrules (1)(a), (b) and (d) of Rule 9-5.

17 The -- I'm going to just perhaps go through
18 the Notice of Application, because it sets out the
19 legal argument. The Notice of Application of
20 Mr. McGee is at Tab 1 in the brief, starting at
21 page 2, legal basis.

22 THE COURT: Mm-hmm.

23 MR. ARMSTRONG: I make reference there to the *Legal*
24 *Profession Act*, s. 86, beginning, and then there's
25 a heading, Rule 9-5 (1)(a), no reasonable claim.
26 The law on this is clear. There are many, many
27 cases on it, but the one most often referred to is
28 *Hunt v. Carey Canada*, which says that a defendant
29 pleading no cause of action must show that it is
30 plain and obvious that the pleading discloses no
31 reasonable cause of action. Facts alleged in the
32 pleadings but not the conclusion of law are
33 assumed to be true.

34 In this case we -- we say that it is plain
35 and obvious in this case. The only plea against
36 Mr. McGee essentially is that he wrote a letter
37 stating a position, and that he did so in his
38 capacity as executive director of the Law Society.
39 The only prayer for relief is something which the
40 court I say really can't grant, which is to send a
41 reminder to Mr. McGee of his obligations, and then
42 there's a claim for damages for obstruction of
43 justice, which is not supported by any factual
44 allegation in the Notice of Civil Claim at all.

45 Section 86, as I said, bars the action
46 against Mr. McGee in any event. Paragraph 9, we
47 say that the assertion that ICBC by compensating

Submissions for Defendant by Mr. Armstrong

1 victims of hit-and-run motorists is rewarding hit-
2 and-run offenders is false, and it's false
3 particularly given ICBC's obligations under s. 24
4 of the *Insurance Vehicle Act*.

5 Paragraph 10, the claim against Mr. McGee
6 arises from an allegation that Mr. McGee is
7 personally obligated to require lawyers in British
8 Columbia to represent him or to provide the form
9 he wants in relation to this proposed private
10 criminal prosecution. No such obligation is known
11 to law or has been demonstrated by anything pled
12 in the Notice of Civil Claim.

13 And again, paragraph 11, the prayer for
14 relief is seeks an order that the court remind
15 Mr. McGee of his obligations. We say no such
16 legal remedy is available to Mr. Korkut, and it's
17 plain and obvious his Notice of Civil Claim
18 discloses no reasonable action as that term is
19 used in rule 9-5(1)(a).

20 We also say that the plea is unnecessary,
21 scandalous, frivolous, and vexatious. I have
22 referred, My Lord, to a number of cases there. I
23 don't propose to take you through them, because
24 they are all pretty much boilerplate. The facts
25 in each of these cases is different than this
26 case, but they stand for the proposition that a
27 pleading is unnecessary or vexatious if it does
28 not go to establishing the plaintiff's cause of
29 action or does not advance any claim known to law,
30 and I say that applies to the plea in this case.
31 Rule 9-6(4) and (5) -- 9-6 is what used to be
32 called Rule 18. Rather than Rule 18A, it's Rule
33 18, and it's similar to that. It permits -- Rule
34 9-6(4) says that:

35
36 In an action, an answering party may, after
37 serving a responding pleading on a claiming
38 party, apply under [the] . . . rule for
39 judgment dismissing all or part of a claim in
40 the claiming party's originating pleading.

41
42 And then subrule (5) there, under the heading,
43 "Power of [the] court," says:

44 . . . the court,

45
46 . . . if satisfied that there is no genuine
47

Submissions for Defendant by Mr. Armstrong

1 issue for trial with respect to a claim or
2 defence, must pronounce judgment or dismiss
3 the claim accordingly.
4

5 We say that that is a circumstance here. There is
6 no genuine issue for trial before this court. It
7 would be unfruitful for this litigation to
8 proceed, given the pleading as it stands. The
9 test for dismissal under Rule 9-6(4) and (5) is
10 set out in paragraph 14 of the Notice of
11 Application.

12 I indicated that the test for -- under Rule
13 9-5 was whether it was plain and obvious no cause
14 of action had been stated. The test under Rule
15 9-6 is a bit different. The courts use the word
16 "bound to fail". If a claim is bound to fail,
17 then it should be dismissed under Rule 9-6, and
18 there are a number of authorities there that stand
19 for that proposition.

20 Rule 9-5 specifically says that where a claim
21 is dismissed as offending that rule, the court may
22 award special costs.

23 We say that beyond that there is also the
24 fact that Mr. Korkut has made an allegation
25 against Timothy McGee that he has engaged in
26 obstruction of justice and has breached a
27 fiduciary duty owed to Mr. Korkut. Those kinds of
28 allegations go to the integrity of the individual
29 he is suing, Mr. McGee.

30 The courts have said in previous cases, and I
31 have referred to two of them, *Garcia v. Crestbrook*
32 *Industries* and *Interstate Investments*, that a
33 party alleging misconduct by somebody for breach
34 of fiduciary duty must not make that allegation
35 lightly, without foundation, and if a party does
36 that, they are exposed to an order for special
37 costs against them.

38 Those are my submissions.

39 THE COURT: All right. We'll take the afternoon break,
40 then I'll hear from you after that, Mr. Korkut.

41 THE CLERK: Order in chambers. This chambers stands
42 down.

43

44 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

45 (PROCEEDINGS RECONVENED)

46

47

Submissions for Plaintiff by Ron Korkut

1 **SUBMISSIONS FOR PLAINTIFF BY RON KORKUT:**
2
3 RON KORKUT: I was going to read only the first page in
4 the handout, but the defendant did not properly
5 presented my case, so I have to read it in order
6 to clarify my claim.
7 Incident. On March 31st, 2009, while driving
8 his work van erratically and speeding on Pattullo
9 Bridge, Stuart Taylor hit the plaintiff car,
10 plaintiff's car, and ran away. The plaintiff lost
11 control of his car that was totally destroyed
12 after three impacts. Fortunately he survived
13 because his car did not skid into the oncoming
14 traffic. Stuart Taylor was caught but not
15 arrested or prosecuted. Instead ICBC assumed the
16 liability of the hit-and-run crime Stuart Taylor
17 committed, and rewarded him by paying the cost of
18 the car he destroyed as if it was an ordinary
19 accident.
20 THE COURT: Sorry, let me make sure I understand your
21 claim, sir. Are you saying that you would have
22 preferred that you not get paid for your -- the
23 damage to your car?
24 RON KORKUT: No, my point is assuming the liability of
25 the criminal action --
26 THE COURT: But.
27 RON KORKUT: Well, insurance -- insurance pays as if
28 it's an accident. Well, when you commit a crime,
29 and caught, and normally, according to the law, as
30 my understanding, you cannot pay the --
31 THE COURT: All right. Okay, but --
32 RON KORKUT: Offenders.
33 THE COURT: -- but --
34 RON KORKUT: Damages.
35 THE COURT: I'm sorry, I'm sorry. I'm asking you the
36 same question. Are you -- would you have rather
37 ICBC had not paid to fix your car?
38 RON KORKUT: Yes. I -- I would rather not paid,
39 because the damage is done by a criminal. That's
40 a different --
41 THE COURT: Okay, and if he has no money?
42 RON KORKUT: Absolutely.
43 THE COURT: So --
44 RON KORKUT: Absolutely.
45 THE COURT: So you don't care if car was fixed?
46 RON KORKUT: No, I don't care, absolutely.
47 THE COURT: Okay. All right.

Submissions for Plaintiff by Ron Korkut

1 RON KORKUT: I do care about the crime. And --
2 THE COURT: All right.
3 RON KORKUT: -- assuming the liability of the crime.
4 That's my point.
5 Worst of all, this is not an isolated case,
6 because, according to ICBC, which statistics,
7 every year ICBC assumes the liability of 49,000
8 hit-and-run crashes that injure 2,200 and kill 10
9 innocent citizens of British Columbia.
10 Hit-and-run crash is criminal offence under
11 the s. 252 of *Canadian Criminal Code*. That's in
12 the handouts.
13 The plaintiff's duty to take action against
14 crime. As a victim of crime, the plaintiff has
15 legal obligation and civic duty to take legal
16 action --
17 THE COURT: You're just reading from your Statement of
18 Claim.
19 RON KORKUT: Yes.
20 THE COURT: I've read it already.
21 RON KORKUT: Yes.
22 THE COURT: So -- all right. Go ahead.
23 RON KORKUT: Legal action against ICBC because it is
24 impossible to prevent crime if victims fail to
25 take legal action against the persons who are
26 liable for their suffering.
27 A lawyer's duty to provide legal service to
28 the public. The plaintiff needed legal advice to
29 file his case, because it was a criminal case. As
30 we know, all -- as we all know and try on the fact
31 that the lawyer's duty is to provide legal service
32 to the public, especially to the victims of crime.
33 This obligation is also clearly stated in the
34 *Canons of Legal Ethics*.
35
36 A lawyer should make legal services available
37 to the public in an efficient and convenient
38 manner that will command respect and
39 confidence.
40
41 Breach of the rules of the professional conduct or
42 obstruction of justice. Therefore, the plaintiff
43 consulted with ten lawyers referred by the Lawyer
44 Referral Service to file his legal action. All of
45 the ten lawyers declined to give him the name of
46 the legal form necessary for filing criminal
47 cases, despite the plaintiff was willing to pay

Submissions for Plaintiff by Ron Korkut

1 for their service. For lawyers withholding legal
2 information necessary for lounging -- launching
3 legal action is tantamount to obstruction of
4 justice, because the lawyers are the only
5 professionals who are knowledgeable and qualified
6 to provide legal service necessary for justice.

7 Reluctance to investigate lawyers' duty to
8 provide legal service. Before filing disciplinary
9 action against those ten lawyers, the plaintiff
10 decided to find out if the Law Society is willing
11 to investigate his complaint about the
12 professional obligations of the lawyers.
13 Therefore he wrote a letter to David J. Bilinsky
14 on April 3rd, 2012, and asked him if he -- if the
15 lawyers had professional obligation to provide
16 legal service to the victims of crime.
17 Nevertheless, he did not answer the plaintiff's
18 question. His conduct was indicative of the fact
19 that Law Society had no intention to investigate
20 the plaintiff's complaint about lawyers' duty to
21 provide legal service to the public.

22 Official denial of lawyers' duty to provide
23 legal service. To resolve the issue
24 administratively, the plaintiff proceeded in
25 hierarchical order. After nine months of
26 communication the Law Society executive director,
27 Mr. Timothy E. McGee, confirmed that the lawyers
28 of British Columbia had no obligation to provide
29 legal service to the victims of crime. In his
30 letter dated January 8, 2013, the plaintiff asked
31 him who had that obligation, but he failed to
32 respond.

33 The consequence of confirming that the
34 lawyers have no obligation to provide legal
35 service to the victims of crime. As long as the
36 lawyers refuse to provide legal service to the
37 plaintiff, the top executive of the Law Society
38 denies lawyers' obligation to provide legal
39 service to the victims of crime, the plaintiff's
40 access to justice will remain obstructed, and ICBC
41 will continue to assume the liability of hit-and-
42 run crimes and reward the offenders under the
43 title of accident insurance benefits.

44 Summary of the defendant's offence. The Law
45 Society represented by the defendant failed and
46 failed to enforce the Code of Professional Conduct
47 for B.C. Therefore, the plaintiff was not able to

Submissions for Plaintiff by Ron Korkut

1 file his case. As a result, last year ICBC
2 assumed the liability of 49,000 hit-and-run
3 crashes that injured 2,200 and killed 10 innocent
4 citizens under the name of providing public
5 service.

6 Two. The plaintiff unnecessarily suffered
7 from the frustration of obstruction of justice.

8 Relief sought. So the plaintiff seeks a
9 court order to remind the Law Society executive
10 director -- director, Mr. Timothy E. McGee, that
11 the lawyers have professional obligation to
12 provide legal service to the public, and the Law
13 Society has a duty to enforce it, to ensure that
14 professional legal advice is available for the
15 victims of crime in order to bring their offenders
16 to justice, including the plaintiff.

17 The fair amount of compensation for suffering
18 from the frustration of obstruction of justice for
19 one year, solely to deter the defendant from
20 offending the other members of the public by
21 breaching his fiduciary duty to enforce the Code
22 of Professional Conduct for B.C. So the legal
23 basis, assuming the liability of 49,000 hit-and-
24 run crashes that injured 2,200 and kill 10
25 innocent citizens every year, and rewarding the
26 offenders by paying the damages they caused by
27 selling compulsory insurance to the public and
28 denying the lawyers' obligation to provide legal
29 service to the victims of hit-and-run crime has no
30 legal basis, as long as the objective of law is to
31 protect the public.

32 My request from the court is the answer to
33 the following question: Who has the obligation to
34 provide legal service to the public if the lawyers
35 have not such an obligation? The defendant has
36 the onus to answer this question before the court
37 if he wants to dismiss my case, because my case is
38 all about the lawyers' professional obligation to
39 provide legal service to the public, especially to
40 the victims of crime.

41 Many times I asked the defendant for an
42 authority that is overriding the *Canons of Legal*
43 *Ethics* that relaxes the lawyers' duty to provide
44 legal service to the public. He failed to do so.
45 Nevertheless, now he has an
46 application -- application to dismiss my case
47 without any authority. If the defendant cannot

Submissions for Plaintiff by Ron Korkut

1 cite an authority that is overriding the *Canons of*
2 *Legal Ethics* that relaxes the lawyers' duty to
3 provide legal service to the public, the dismissal
4 of my case will be unauthorized.

5 Unauthorized dismissal of the case that is
6 about assuming the liability of 49,000 hit-and-run
7 crimes that kill ten, injure and cripple 2,200
8 innocent citizens of British Columbia every year
9 may bring the administration of justice into
10 disrepute.

11 That's all, My Lord.

12 THE COURT: All right. Mr. Armstrong, any reply?

13

14 **REPLY FOR DEFENDANT BY MR. ARMSTRONG:**

15

16 MR. ARMSTRONG: No, My Lord, except just one thing.

17 Mr. Korkut in his handout attaches the portion of
18 the *Canons of Legal Ethics*.

19 THE COURT: Yes.

20 MR. ARMSTRONG: I'm not sure where it comes from
21 exactly, but I think he's misinterpreting the
22 provision he's talking about, which is on the
23 second page, and highlighted in yellow.

24 THE COURT: Yes, I see it.

25 MR. ARMSTRONG: Which is under a section headed duties
26 of lawyers, "To Oneself." I think all that
27 section is intended to be is a reminder to lawyers
28 if they do provide legal services to somebody to
29 do so efficiently and conveniently.

30 There is authority for the proposition that
31 *Canons of Legal Ethics* and the *Code of*
32 *Professional Conduct* are not legal obligations
33 that are -- that are something the court responds
34 to. The court generally says those are matters
35 for the Law Society in disciplinary situations --

36 THE COURT: Yes.

37 MR. ARMSTRONG: -- to deal with, not for the courts.

38 THE COURT: Yes. Yes, Mr. Korkut.

39 **RON KORKUT:** Who has the obligation to provide legal
40 service to the public if the lawyers have not such
41 an obligation? Please answer this question before
42 the court.

43 **THE COURT:** All right.

44

45 [REASONS FOR JUDGMENT]

46

47 THE COURT: Thank you.

Proceedings

1 THE CLERK: Order in chambers. This chambers stands
2 adjourned.

3
4 (PROCEEDINGS CONCLUDED)

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7 Transcriber: R. Greenaway

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