



**Form 32 (Rule 8-1 (4) )**

**No. 58772  
Vernon Registry**

*In the Supreme Court of British Columbia*

Between

Colton Kevin Kumar, 1304139 B.C. LTD. and Kevin Anthony Kumar

Plaintiff(s)

and

John McDonald, Heidi Semkowich and McDonald Paralegal Services Ltd.

Defendant(s)

**NOTICE OF APPLICATION**

*[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]*

**Names of applicants: JOHN McDONALD, HEIDI SEMKOWICH, and McDONALD PARALEGAL SERVICES LTD.**

To: COLTON KEVIN KUMAR, 1304139 B.C. LTD., and KEVIN ANTHONY KUMAR.

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or associate judge at the courthouse at 3001 27<sup>th</sup> Street, Vernon British Columbia, V1T 4W5 on January 20, 2025 at 10:00 am for the order(s) set out in Part 1 below.

The applicant(s) estimate(s) that the application will take not more than one hour.

This matter is not within the jurisdiction of an associate judge as it seeks a Final Order

**Part 1: ORDER(S) SOUGHT**

1. An Order staying the Action for want of Jurisdiction.
2. An Order dismissing the claim as scandalous, frivolous, or vexatious pursuant to rule 9-5(1)(b).
3. An Order dismissing the claim as an abuse of process pursuant to Rule 9-5(1)(d).
4. An Order dismissing the claim pursuant to the *Protection of Public Participation Act*.
5. An Order Declaring the Plaintiff's Colton Kevin Kumar, and Kevin Anthony Kumar to be vexatious litigants.
6. An order prohibiting the Plaintiff's Colton Kevin Kumar, and Kevin Anthony Kumar from bringing any action against John McDonald, McDonald Paralegal Services Ltd., and Heidi Semkowich without first obtaining leave of the Court.
7. An Order awarding costs on a full indemnity basis pursuant to the *Protection of Public Participation Act*.

**Part 2: FACTUAL BASIS**

**Jurisdiction**

1. The matters complained of occurred entirely in the Province of Alberta.
2. The Defendants reside and carry on business in the Province of Alberta.
3. There is no real and substantial connection with respect to the matters complained

4. This Action ought to have been brought in the Alberta Court of King's Bench.

### **Scandalous, Frivolous, or Vexatious Pleadings, and abuse of process**

5. The claim of the Plaintiffs is rooted in Defamation with respect to matters which are pled before the Alberta Court of Justice and are subject to Absolute Privilege.
6. The Promissory Notes for which the Plaintiffs claim to enforce are subject to litigation in the Alberta Court of Justice in Actions No. P2490103259, and P2490103260. (the "**ABCJ Actions**")
7. The Allegations which relate to Defamation are in relation to facts laid out in a pleading before the Alberta Court of Justice.
8. The Plaintiffs are subject to a number of Court Access Restrictions in the Province of Alberta and have brought this Action in the Supreme Court of British Columbia to circumvent those Orders and such action is an abuse of process.

### **Protection of Public Participation**

9. This proceeding arises from an expression made by the applicant in a Pleading before the Alberta Court of Justice.
10. The alleged expression relates to a matter of public interest.

## **Part 3: LEGAL BASIS**

### **Territorial Competence**

11. s.3 of the *Court Jurisdiction and Proceedings Transfer Act* SBC 2003 c.28 (the "**Act**") hold that a court has territorial competence in a proceeding that is brought against a person only if
  - a. that person is the Plaintiff in another proceeding in the court to which the proceeding in question is a counterclaim,
  - b. During the course of the proceeding that person submits to the court's jurisdiction,
  - c. There's an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding,
  - d. That person is ordinarily resident in British Columbia at the time of the commencement of the proceeding, or
  - e. There is a real and substantial connection between British Columbia and the facts on which the proceeding against the person is based.
12. Pursuant to s.7 of the *Act* a corporation is ordinarily resident in British Columbia

for the purposes of this part, only if

- a. The corporation has or is required by law to have a registered office in British Columbia,
- b. Pursuant to law, it
  - i. Has registered an address in British Columbia at which process may be served generally, or
  - ii. Has nominated an agent in British Columbia upon whom process may be served generally,
- c. It has a place of business in British Columbia, or
- d. Its central management is exercised in British Columbia.

13. As it relates to residence, Both John McDonald and Heidi Semkowich are ordinarily resident in the province of Alberta in the cities of Calgary and Sherwood Park respectively.

14. As it relates to corporate residence, McDonald Paralegal Services Limited is an Alberta Corporation duly incorporated pursuant to the *Alberta Business Corporations Act* and extra provincially registered in the province of Saskatchewan.

15. Section 10 of the *Act* holds that without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between British Columbia and the facts in which a proceeding is based, a real and substantial connection between British Columbia and those facts is presumed to exist if the proceeding

- a. Is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in property in British Columbia that is immovable or movable property,
- b. Concerns contractual obligations, and
  - i. The contractual obligations, to a substantial extent were to be performed in British Columbia, or
  - ii. The contract:
    1. Is for the purchase of property or services or both for use other than in the course of the purchaser's trade or profession, and
    2. Resulted from a solicitation of business in British Columbia by or on behalf of the seller.
- c. Concerns a tort committed in British Columbia
- d. Concerns a business carried on in British Columbia,
- e. Is a claim for an injunction ordering a party to do or refrain from doing anything
  - i. In British Columbia, or
  - ii. In relation to property in British Columbia.

16.s.11 of the act holds that after considering the interests of the parties to a proceeding in the ends of Justice, a court may decline to exercise its territorial

competence in the proceeding on the ground that the Court of another state is a more appropriate forum in which to hear the proceeding.

17. A court, in deciding the question of whether a court outside British Columbia is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including
  - a. The comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,
  - b. The law to be applied to the issues in the proceeding
  - c. The desirability of avoiding multiplicity of legal proceedings,
  - d. The desirability of avoiding conflicting decisions in different courts,
  - e. The enforcement of an eventual judgment, and
  - f. The fair and efficient working of the Canadian legal system as a whole.
18. In sum the individual defendants are both ordinarily resident in the province of Alberta, John McDonald in the city of Calgary, and Heidi Semkowich in the city of Sherwood Park.
19. McDonald Paralegal services Ltd is a body corporate duly incorporated pursuant to the Alberta *Business Corporations Act* and extra provincially registered in the province of Saskatchewan.
20. In respect of the statements in which the plaintiffs allege are defamatory those comments and the associated Alberta Court of Justice actions occurred in the province of Alberta.
21. Simply put the province of British Columbia has no territorial competence with respect to the matters complained herein.
22. As it relates to the consideration of *forum non conveniens* Alberta is the more convenient forum.
23. All of the defendants and their probable witnesses are located in the province of Alberta.
24. The matters complained of are matters before the Alberta Court of Justice by exercising jurisdiction there is a real risk of a multiplicity of legal proceedings, and conflicting decisions, and Jurisdiction should be declined on that basis alone.

## Scandalous, Frivolous or Vexatious Pleadings and Abuse of Process

25. The matters complained of are in relation to matters plead before the Alberta Court of Justice and as a result enjoy Absolute Privilege.
26. In *Geyer v. Merritt* 1979 CanLii 682 the Court held that “A Statement of Claim brought on an occasion of absolute privilege is incapable of amendment, the Action is harassment and therefore vexatious.
27. Claims with respect to Professional Misconduct have been plead in the Dispute Notes to the ABCJ Actions.
28. The Individual Plaintiffs are subject to Court Access Restrictions in the Alberta Court of King’s Bench and have brought this Action in British Columbia to circumvent those Orders.

*Bonville v. President’s Choice Financial* 2024 ABKB 546

*Bonville v. President’s Choice Financial* 2024 ABKB 483

*Bonville v. President’s Choice Financial* 2024 ABKB 356

*Royal Bank of Canada v. Courtorielle*, 2024 ABKB 302

Lovecchio, J dockets 1201-11892, 1201-12187, 1201-14301 (unreported but referred to

By Neilsen, K, ACJ in *Courtorielle*

*1158997 Alberta Inc v. Maple Trust Company*, 2012 ABQB

29. In *Wang v. British Columbia Medical Association*, 2010 BCCA 43 the BC Court of Appeal reviewed abuse of process at para 60. The Court, citing *Flavelle v. Mahood* 1980 CanLii 488 (BCSC) at p242., that A pleading is an abuse of process if made knowing there is no factual basis for the allegations made or if made for some improper collateral purpose.
30. It is clear in light of the many Court Access Restriction Orders and Judgments that Colton Kevin Kumar, and Kevin Anthony Kumar have brought this claim in the Province of British Columbia with a view to circumvent the Orders which require them to seek leave to bring the claim in the Province of Alberta where it rightly belongs.

## Protection of Public Participation Act

31. The *Protection of Public Participation Act* was enacted as a form of Anti SLAPP legislation in British Columbia and elsewhere. An application under this act can prevent a plaintiff with a valid cause of action from proceeding with their suit as long as the public interest in protecting the defendant’s expression outweighs the public interest in allowing the plaintiff to proceed.

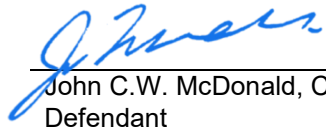
**Part 4: MATERIAL TO BE RELIED ON**

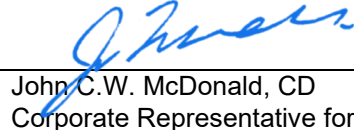
1. Affidavit #1 of John McDonald, made December 18, 2024,
2. Affidavit #1 oh Heidi Semkowich, made December 18, 2024,

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

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

December 18 ,2024  
Date

  
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John C.W. McDonald, CD  
Defendant

  
\_\_\_\_\_  
John C.W. McDonald, CD  
Corporate Representative for  
McDonald Paralegal Services Ltd.

  
\_\_\_\_\_  
Heidi Semkowich  
Defendant